रजिस्ट्री सं० डी एल (एन) 04/0007/2003—05

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भारत का राजपत्र
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सं. 20] नई दिल्ली, मई 9—मई 15, 2004, शनिवार/वैशाख 19—वैशाख 25, 1926
No. 20] NEW DELHI, MAY 9—MAY 15, 2004, SATURDAY/VAISAKHA 19—VAISAKHA 25, 1926

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

मंत्रिमंडल सचिवालय

नई दिल्ली, 30 अप्रैल, 2004

का० आ० 1131.—केन्द्रीय सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं० 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री सी० सहाय, अधिवक्ता, को विचारण न्यायालयों तथा अपील/पुनरीक्षण न्यायालयों में दिल्ली विशेष पुलिस स्थापना द्वारा दायर सी०बी०आई० मामला सं० आर०सी०7 (एस)/2003/एसआईसी-IV/एससीबी/लखनऊ (डा० आई० जी० खान की हत्या का मामला) के विचारण तथा किसी राज्य या संघ राज्य-क्षेत्र में विधि द्वारा स्थापित न्यायालयों में इस मामले से उद्भूत अन्य किन्हीं विषयों, जिन पर उपर्युक्त धारा के उपबंध लागू होते हों, का संचालन करने हेतु वरिष्ठ लोक अभियोजक के रूप में नियुक्त करती है।

[सं० 225/8/2004-डी० एस० पी०ई०]

शुभा ठाकुर, अवर सचिव

CABINET SECRETARIAT

New Delhi, the 30th April, 2004

S.O. 1131.—In exercise of the powers conferred by Sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints of Sh. C. Sahay, Advocate as Special Public Prosecuter for conducting trial of CBI case RC-7(S)/2003/SIC-IV/SCB/Lucknow (Dr. I. G. Khan murder case) instituted by the Delhi Special Police Establishment in the Trial Courts and appellate/revisional Courts or any other matters arising out of the case in the Courts established by law in any State or Union Territory to which the provisions of the aforesaid Section apply.

[No. 225/8/2004-DSPE]

SHUBHA THAKUR, Under Secy.

वित्त मंत्रालय

(राजस्व विभाग)

केन्द्रीय प्रत्यक्ष कर बोर्ड

नई दिल्ली, 28 अप्रैल, 2004

का० आ० 1132.—सामान्य जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार नीचे पैरा (3) में सूचीबद्ध उद्यम को आयकर नियमावली, 1962 के नियम 2ड. के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23छ) के प्रयोजनार्थ कर निर्धारण वर्ष 2000-01 से कर निर्धारण वर्ष 2029-30 तक (14-7-2028 तक) अर्थात् तूतीकोरिन पोर्ट ट्रस्ट तथा उद्यम के बीच दिनांक 15-7-1998 के लाइसेंस करार में यथा उल्लिखित 30 वर्षों की अवधि अथवा उपर्युक्त करार की शर्तों के उल्लंघन की दशा में पहले अनुमोदित करती है।

2. यह अनुमोदन इस शर्त के अधीन है कि :—

(i) उद्यम/उपक्रम आयकर नियमावली, 1962 के नियम 2ङ के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23छ) के उपबंधों के अनुरूप होगा और उनका अनुपालन करेगा;

(ii) केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि उद्यम/औद्योगिक उपक्रम :—

(क) आयकर नियमावली, 1962 के नियम 2ङ की व्याख्या (ख) में यथापरिभाषित पात्र कारोबार सुविधा को जारी रखना बंद कर देता है; अथवा

(ख) खाता बहियों का रख-रखाव नहीं करता है तथा आयकर नियमावली, 1962 के नियम 2ङ के उप नियम (6) द्वारा यथा अपेक्षित किसी लेखाकार द्वारा ऐसे खातों की लेखा परीक्षा नहीं कराता है; अथवा

(ग) आयकर नियमावली, 1962 के नियम 2ङ के उप नियम (6) द्वारा यथा अपेक्षित लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करता है।

3. अनुमोदित उद्यम/औद्योगिक उपक्रम है :—

मैसर्स पी० एस० ए० सिकाल, टर्मिनल्स लिमिटेड, 36-40 अर्मेनियम स्ट्रीट, चेन्नई-600001 को तूतीकोरिन पोर्ट ट्रस्ट के साथ दिनांक 15-07-1998 को निष्पन्न हुए लाइसेंस करार के अनुसार निर्माण संचालन और हस्तांतरण के आधार पर तूतीकोरिन पोर्ट पर 7वीं गोदी पर कंटेनर टर्मिनल के विकास, रख-रखाव तथा संचालन हेतु उनकी परियोजना के लिए (फा० सं० 205/18/2001 आ०क०नि०-II)

[अधिसूचना सं० 143/2004/फा० सं० 205/18/2000-आयकर नि०-II]

उपमन्यु बसु, निदेशक (आयकर नि०-II)

MINISTRY OF FINANCE

(Department of Revenue).

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 28th April, 2004

S.O. 1132.—It is notified for general information that the enterprise, listed at para (3) below has been approved by the Central Government for the purpose of Section 10(23G) of the Income-tax Act, 1961, read with Rule 2E of the Income-tax Rules, 1962 with effect from the Asstt. Year 2000-01 to Asst. Year 2029-30 (upto 14-07-2028) i. e. the end of the period of 30 years as mentioned in Licence agreement dt. 15-07-1998 between the Tuticorin Port Trust and the enterprise, or eariler in the event of violation of the terms of the agreement aforesaid.

2. The approval is subject to the conditions that—

(i) the enterprise/undertaking will confirm to and comply with the provisions of Section 10(23G) of the Income-tax Act, 1961, read with Rule 2E of the Income-tax Rules, 1962;

(ii) the Central Government shall withdraw this approval if the enterprise/undertaking :—

(a) ceases to carry on the eligible business as defined in Explanation (b) to Rule 2E of I.T. Rules, 1962; or

(b) fails to maintain books of account and get such accounts audited by an accountant as required by Sub-rule (6) of Rule 2E of the Income-tax Rules, 1962; or

(c) fails to furnish the audit report as required by Sub-rule (6) of Rule 2E of Income-tax Rules, 1962.

3. The enterprise/industrial undertaking approved is—

M/s PSA SICAL Terminals Ltd., 36—40, Armenian Street, Chennai-600001 for their project of development, maintenance and operation of Container Terminal at 7th berth at Tuticorin Port under Build Operate and Transfer (BOT) Basis as per Licence Agreement dt. 15-07-1998 entered into with the Tuticorin Port Trust (F. No. 205/18/2000-ITA-II)

[Notification No. 143/2004/F.No. 205/18/2000-ITA-II]

UPAMAYNU BASU, Director (I.T.A.-II)

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

शुद्धिपत्र

नई दिल्ली, 30 अप्रैल, 2004

का. आ. 1133.— श्री टी.आर. श्रीधरन की औद्योगिक और वित्तीय पुनर्निर्माण बोर्ड के सदस्य के रूप में नियुक्ति से संबंधित वित्त मंत्रालय, आर्थिक कार्य विभाग (बैंकिंग प्रभाग) की दिनांक 11 मई, 1999 की अधिसूचना सं. 7/17/96-बीओ-1 की पंक्ति 5 में एतद्द्वारा निम्नलिखित संशोधन किया जाता है :—

के स्थान पर	पढ़ा जाए
"31 मई, 2004 तक"	"14 मई, 2004 तक, जिस तारीख को वे 65 वर्ष की आयु पूरी करते हैं"

[फा. सं. 20(6)/2002-आईएफ-II]

कृष्ण लाल, अवर सचिव

(Department of Economic Affairs)

(Banking Division)

CORRIGENDUM

New Delhi, the 30th April, 2004

S.O. 1133.—The following correction is hereby made in line 6 of Ministry of Finance, Department of Economic Affairs (Banking Division) Notification No. 7/17/96-B.O.I dated the 11 th May, 1999 regarding appointment of Shri T.R. Sridharan as Member of the Board for Industrial and Financial Reconstruction :—

FOR	READ
"upto 31st May, 2004"	"upto 14th May, 2004, the date on which he attains the age of sixty five years"

[F. No. 20(6)2002-IF. II]

KRISHAN LAL, Under Secy.

नई दिल्ली, 30 अप्रैल, 2004

का. आ. 1134.—रुग्ण औद्योगिक कंपनी (विशेष उपबंध) अधिनियम, 1985 की धारा 6 की उपधारा (2) के साथ पठित धारा 4 की उपधारा (2) द्वारा प्रदत्त शक्तियों के अनुसरण में, केन्द्रीय सरकार एतद्द्वारा औद्योगिक एवं वित्तीय पुनर्निर्माण बोर्ड के सदस्यों के रूप में सर्वश्री एन.पी. बागची, एन. आर. बनर्जी तथा एन.पी. सिंह के कार्यकाल को उनके वर्तमान कार्यकाल की समाप्ति से तीन माह की अतिरिक्त अवधि के लिए या बीआईएफआर के उत्सादन तक या अगले आदेशों तक, जो भी पहले हो, पुनर्नियुक्त करती है।

2. इसके अलावा, उपर्युक्त अधिनियम की धारा 6 की उपधारा 5 के द्वारा प्रदत्त शक्तियों के अनुसरण में, केन्द्रीय सरकार श्री एन.पी. बागची को इस अवधि के दौरान बीआईएफआर के अध्यक्ष के रूप में कार्य करने के लिए प्राधिकृत करती है।

[फा. सं. 20(1)/2004-आईएफ-II]

कृष्ण लाल, अवर सचिव

New Delhi, the 30th April, 2004

S.O. 1134.—In pursuance of the powers conferred by Sub-section (2) of Section 4 read with Sub-section (2) of Section 6 of the Sick Industrial Companies (Special Provisions) Act, 1985, the Central Government hereby reappoints S/Shri N.P. Bagchee, N.R. Banerjee and N.P. Singh as Members of the Board for Industrial and Financial Reconstruction (BIFR), beyond the expiry of their present term, for a further period of three months or till the abolition of BIFR or until further orders, whichever is earlier.

2. Further, in pursuance of the powers conferred by Sub-section (5) of Section 6 of the said Act, the Central Government authorizes Shri N.P. Bagchee to act as Chairman of BIFR during this period.

[F. No. 20(1)2004-IF. II]

KRISHAN LAL, Under Secy.

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 29 अप्रैल, 2004

का. आ. 1135.—राजनयिक कौंसली अधिकारी (शपत एवं शुल्क) अधिनियम 1948 (1948 का 41वां) को धारा 2 के अंक (क) के अनुसरण में केन्द्रीय सरकार एतद्द्वारा भारत का राजदूतावास, लिज़बन में श्री शेखर यादव, सहायक को 29-04-2004 से सहायक कौंसली अधिकारी का कार्य करने हेतु प्राधिकृत करती है।

[सं. टी-4330/01/2004]

उपेन्द्र सिंह रावत, अवर सचिव (कौंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(C.P.V. Division)

New Delhi, the 29th April, 2004

S.O. 1135.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby authorise Shri Shekhar Yadav, Assistant in the Embassy of India, Lisbon to perform the duties of Assistant Consular Officer with effect from 29-04-2004.

[No. T. 4330/01/2004]

U. S. RAWAT, Under Secy. (Cons.)

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

नई दिल्ली, 30 अप्रैल, 2004

का. आ. 1136.—"सिगरेट और अन्य तम्बाकू उत्पाद (विज्ञापन का प्रतिषेध और व्यापार तथा वाणिज्य उत्पादन, प्रदाय और वितरण का विनियमन) अधिनियम, 2003" की धारा 25 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार स्वास्थ्य विभाग, स्वास्थ्य और परिवार कल्याण मंत्रालय में एतद्द्वारा नीचे दी गई तालिका के कॉलम 3 में निर्दिष्ट अधिकारियों को प्राधिकृत करती है, जो उक्त अधिनियम की धारा 4 के अन्तर्गत कार्य करने हेतु सक्षम होंगे :—

क्रम सं.	कार्यालय	प्राधिकृत व्यक्ति
1	2	3
1.	स्वास्थ्य विभाग, परिवार कल्याण विभाग और आयुष विभाग	संबंधित विभागों के निदेशक अथवा उप सचिव (प्रशासन)
2.	स्वास्थ्य सेवा महानिदेशालय	निदेशक (प्रशासन एवं सतर्कता)
3.	स्वास्थ्य सेवा महानिदेशालय के अधीनस्थ कार्यालय	कार्यालयों के प्रमुख
4.	स्वास्थ्य और परिवार कल्याण मंत्रालय के अधीन कार्यरत स्वास्थ्य निकाय/सांविधिक निकाय/परिषदें	प्रशासनिक अधिकारी
5.	स्वास्थ्य और परिवार कल्याण मंत्रालय के अधीन कार्यरत सार्वजनिक क्षेत्र के उपक्रम	कार्मिक अधिकारी

यह अधिसूचना 1 मई, 2004 से लागू होगी।

[फा. सं. पी. 16011/1/2004-पी.एच.]

भवानी त्यागराजन, संयुक्त सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health)

New Delhi, the 30th April, 2004

S.O. 1136.—In exercise of the powers conferred by Section 25 of "The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003", the Central Government in the Department of Health, Ministry of Health & Family Welfare hereby authorizes the officers indicated in Column 3 of the Table given below who shall be competent to act under Section 4 of the said Act :—

S. No.	Office	Authorised Person
1	2	3
1.	Department of Health, Department of Family and Department of AYUSH	Director or Deputy Secretary (Administration) of the respective Departments
2.	Directorate General of Health Services	Director (Administration & Vigilance)
3.	Subordinate Offices under DTE.GHS.	Heads of Offices
4.	Autonomous Bodies/ Statutory Bodies/ Councils functioning under Ministry of Health and Family Welfare	Administrative Officer
5.	Public Sector Undertakings functioning under Ministry of Health and Family Welfare	Personnel Officer

This notification shall come into effect from 1st May, 2004.

[F. No. P-16011/1/2004-PH]

BHAVANI THYAGARAJAN, Jt. Secy.

नई दिल्ली, 30 अप्रैल, 2004

का. आ. 1137.—सार्वजनिक परिसर (अप्राधिकृत दखलकारों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार डा. (श्रीमती) शशी खरे, कन्सलटेंट (माइक्रो), राष्ट्रीय संचारी रोग संस्थान, 22-शाम नाथ मार्ग, दिल्ली-110054, जो सरकार की राजपत्रित अधिकारी हैं, को उक्त अधिनियम के प्रयोजन हेतु सम्पदा अधिकारी नियुक्त करती है, जो नीचे दी गई तालिका के कालम 2 में उल्लिखित सार्वजनिक परिसरों के संबंध में अपने अधिकार-क्षेत्र की सीमाओं के भीतर उक्त अधिनियम द्वारा अथवा इसके अन्तर्गत संपदा अधिकारी को प्रदत्त शक्तियों का प्रयोग करेंगी तथा सौंपे गए कार्यों का निष्पादन करेंगी।

तालिका

अधिकारी का नाम और पदनाम	सार्वजनिक परिसर
डा. श्रीमती शशी खरे कन्सलटेंट (माइक्रो) राष्ट्रीय संचारी रोग संस्थान, दिल्ली।	22-शाम नाथ मार्ग, दिल्ली-110054 में स्थित एन.आई.सी.डी. कैम्पस के सभी कार्यालय और आवासीय इकाईयां एवं अन्य इमारतें।

[फा. सं. ए.-60011/17/2003-पी.एच. (सी.डी.एल.)/पी.एच.]

के.वी.एस. राव, अवर सचिव

New Delhi, the 30th April, 2004

S.O. 1137.—In exercise of the powers conferred by Section 3 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby appoints Dr. (Smt.) Shashi Khare, Consultant (Micro), National Institute of Communicable Diseases, 22-Sham Nath Marg, Delhi-110054 being a Gazetted Officer of the Government to be Estate Officer for the purpose of the said Act, who shall exercise the powers conferred and perform the duties imposed on the Estate Officer by or under the said Act, within the limits of her jurisdiction in respect of the Public Premises specified in Col. 2 of the Table below :—

TABLE

Name & Designation of the Officer	Public Premises
1	2
Dr. (Smt.) Shashi Khare, Consultant (Micro), National Institute of Communicable Diseases, Delhi	All offices and residential units and other structures in the NICD Campus at 22-Sham Nath Marg, Delhi-110054.

[F. No. A-60011/17/2003-PH(CDL)/PH]

K.V.S. RAO, Under Secy.

खाद्य प्रसंस्करण उद्योग मंत्रालय

नई दिल्ली, 27 अप्रैल, 2004

का. आ. 1138.—मांस खाद्य उत्पाद आदेश, 1973 के अनुच्छेद 2 के खण्ड (च) के अनुसरण में, केन्द्रीय सरकार एतद्द्वारा खाद्य प्रसंस्करण उद्योग मंत्रालय में संयुक्त सचिव श्री ए.एन.पी. सिन्हा को उक्त आदेश के प्रयोजन हेतु श्री पी.के. अग्रवाल, कृषि विपणन सलाहकार, भारत सरकार के स्थान पर लाइसेंसिंग प्राधिकारी के रूप में नियुक्त करती है।

[फा. सं. 11(3)/18/2001- एम एंड एम पी डेस्क]

ज.प्र. शुक्ल, निदेशक

MINISTRY OF FOOD PROCESSING INDUSTRIES

New Delhi, the 27th April, 2004

S.O. 1138.—In pursuance of clause (f) of Paragraph 2 of the Meat Food Products Order, 1973, the Central Government hereby appoints Shri A.N.P. Sinha, Joint Secretary in the Ministry of Food Processing Industries, as the Licensing Authority for purposes of the said Order vice Shri P.K. Agarwal, Agricultural Marketing Adviser to the Government of India.

[F. No. 11(3)/18/2001-M&MP Desk]

J.P. SHUKLA, Director

वाणिज्य और उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 26 अप्रैल, 2004

का. आ. 1139.—केन्द्रीय सरकार निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 17 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, बासमती चावल का निर्यात (क्वालिटी नियंत्रण और निरीक्षण) नियम, 2003 का संशोधन करने के लिए निम्नलिखित नियम बनाती है, अर्थात :—

1. (1) इस नियम का संक्षिप्त नाम बासमती चावल का निर्यात (क्वालिटी नियंत्रण और निरीक्षण) संशोधन नियम, 2004 है।

(2) ये राजपत्र में प्रकाशन की तारीख को प्रवृत्त होंगे।

2. बासमती चावल का निर्यात (क्वालिटी नियंत्रण और निरीक्षण) नियम, 2003 नियम 8 के उप-नियम (ङ) का लोप किया जाएगा।

[फा. सं. 6/2/2000-ईआई एण्ड ई पी]

राज सिंह, निदेशक

टिप्पण :—मूल नियम भारत के राजपत्र (असाधारण) में का.आ. 68(अ) तारीख 23 जनवरी, 2003 द्वारा प्रकाशित किए गए थे।

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 26th April, 2004

S.O. 1139.—In exercise of the powers conferred by Section 17 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), the Central Government hereby makes the following rules to amend the Export of Basmati Rice (Quality Control and Inspection) Rules, 2003, namely :—

1. (1) These rules may be called the Export of Basmati Rice (Quality Control and Inspection) Amendment Rules, 2004.

(2) They shall come into the force on the date of their publication in the Official Gazette.

2. In the Export of Basmati Rice (Quality Control and Inspection) Rules, 2003, in rule 8, sub-rule (e) shall be omitted.

[F. No. 6/2/2000-EI&EP]

RAJ SINGH, Director

Note :—The principal rules were published in the Gazette of India Extraordinary, *vide* S.O. 68(E) dated the 23rd January, 2003.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 7 मई, 2004

का. आ. 1140.—केन्द्रीय सरकार, सरकारी स्थान (अप्राधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, नीचे दी गई सारणी के स्तंभ (2) में उल्लिखित अधिकारियों को, जो सरकार के राजपत्रित अधिकारी की पंक्ति के समतुल्य अधिकारी हैं, उक्त अधिनियम के प्रयोजनों के लिए संपदा अधिकारी नियुक्त करती है, जो उक्त सारणी के स्तंभ (3) में की तत्स्थानी प्रविष्टि में विनिर्दिष्ट सरकारी स्थानों की बाबत अपनी-अपनी अधिकारिता की स्थानीय सीमाओं के भीतर, उक्त अधिनियम द्वारा या उसके अधीन संपदा अधिकारियों को प्रदत्त शक्तियों का प्रयोग तथा अधिरोपित कर्तव्यों का पालन करेंगे :—

सारणी

क्रम सं.	अधिकारी का पदनाम	सरकारी स्थानों के प्रवर्ग और अधिकारिता की स्थानीय सीमाएं
(1)	(2)	(3)
1.	मुख्य प्रबंधक (मानव संसाधन) या वरिष्ठ प्रबंधक (मानव संसाधन) या प्रबंधक (मानव संसाधन), गेल (इण्डिया) लिमिटेड, कोलकाता (पश्चिम बंगाल)	असम, बिहार, उड़ीसा, त्रिपुरा तथा पश्चिम बंगाल में स्थित गेल (इण्डिया) लिमिटेड के विविध कार्य केन्द्रों में और अन्य गैस पाइप लाइन या प्रसंस्करण संस्थापन, नगर क्षेत्रों के अलावा आवासीय, कार्यालय प्रयोजन के लिए पट्टे पर लिए गए और कंपनी के स्वामित्व वाले स्थान।
2.	मुख्य प्रबंधक (मानव संसाधन) या वरिष्ठ प्रबंधक (मानव संसाधन) या प्रबंधक (मानव संसाधन), गेल (इण्डिया) लिमिटेड, राजमुंदरी (आन्ध्र प्रदेश)	आंध्र प्रदेश, कर्नाटक, केरल, पांडिचेरी तथा तामिलनाडु में स्थित गेल (इण्डिया) लिमिटेड के विविध कार्य केन्द्रों में और अन्य गैस पाइप लाइन या प्रसंस्करण तथा द्रवित पेट्रोलियम गैस पाइप लाइन संस्थापन, नगर क्षेत्रों के अलावा आवासीय, कार्यालय प्रयोजन के लिए पट्टे पर लिए गए और कंपनी के स्वामित्व वाले स्थान।
3.	वरिष्ठ प्रबंधक (मानव संसाधन) या प्रबंधक (मानव संसाधन) या उप प्रबंधक (मानव संसाधन), गेल (इण्डिया) लिमिटेड, मुंबई (महाराष्ट्र)	महाराष्ट्र में स्थित गेल (इण्डिया) लिमिटेड के विविध कार्य केन्द्रों में और अन्य गैस पाइप लाइन या प्रसंस्करण संस्थापन, नगर क्षेत्रों के अलावा आवासीय, कार्यालय प्रयोजन के लिए पट्टे पर लिए गए और कंपनी के स्वामित्व वाले स्थान।
4.	वरिष्ठ प्रबंधक (मानव संसाधन) या प्रबंधक (मानव संसाधन) या उप प्रबंधक (मानव संसाधन), गेल (इण्डिया) लिमिटेड वडोदरा (गुजरात)	गुजरात में स्थित गेल (इण्डिया) लिमिटेड के विविध कार्य केन्द्रों में और अन्य गैस पाइप लाइन या प्रसंस्करण तथा द्रवित पेट्रोलियम गैस पाइप लाइन संस्थापन, नगर क्षेत्रों के अलावा आवासीय, कार्यालय प्रयोजन के लिए पट्टे पर लिए गए और कंपनी के स्वामित्व वाले स्थान।
5.	वरिष्ठ प्रबंधक (मानव संसाधन) या प्रबंधक (मानव संसाधन) या उप प्रबंधक (मानव संसाधन), गेल (इण्डिया) लिमिटेड, विजयपुर (मध्य प्रदेश)	मध्य प्रदेश में स्थित गेल (इण्डिया) लिमिटेड के विविध कार्य केन्द्रों में और अन्य गैस पाइप लाइन या प्रसंस्करण संस्थापन, नगर क्षेत्रों के अलावा आवासीय, कार्यालय प्रयोजन के लिए पट्टे पर लिए गए और कंपनी के स्वामित्व वाले स्थान।
6.	वरिष्ठ प्रबंधक (मानव संसाधन) या प्रबंधक (मानव संसाधन) या उप प्रबंधक (मानव संसाधन), गेल (इण्डिया) लिमिटेड जयपुर (राजस्थान)	राजस्थान तथा हरियाणा में स्थित गेल (इण्डिया) लिमिटेड के विविध कार्य केन्द्रों में और अन्य गैस पाइप लाइन या प्रसंस्करण तथा द्रवित पेट्रोलियम गैस पाइप लाइन संस्थापन, नगर क्षेत्रों के अलावा आवासीय, कार्यालय प्रयोजन के लिए, पट्टे पर लिए गए और कंपनी के स्वामित्व वाले स्थान।
7.	वरिष्ठ प्रबंधक (मानव संसाधन) या प्रबंधक (मानव संसाधन) या उप प्रबंधक (मानव संसाधन), गेल (इण्डिया) लिमिटेड, पाता (उत्तर प्रदेश)	उत्तर प्रदेश में स्थित गेल (इण्डिया) लिमिटेड के विविध कार्य केन्द्रों में और अन्य गैस पाइप लाइन या प्रसंस्करण तथा द्रवित पेट्रोलियम गैस पाइप लाइन या प्रसंस्करण तथा द्रवित पेट्रोलियम गैस पाइप लाइन संस्थापन, नगर क्षेत्रों के अलावा आवासीय, कार्यालय प्रयोजन के लिए पट्टे पर लिए गए और कंपनी के स्वामित्व वाले स्थान।

(1)	(2)	(3)
8.	मुख्य प्रबंधक (मानव संसाधन) या वरिष्ठ प्रबंधक (मानव संसाधन) या प्रबंधक (मानव संसाधन), गेल (इण्डिया) लिमिटेड नई दिल्ली (राष्ट्रीय राजधानी राज्य क्षेत्र-दिल्ली)	राष्ट्रीय राजधानी राज्य क्षेत्र, राष्ट्रीय राजधानी प्रादेशिक दिल्ली, पंजाब तथा चण्डीगढ़ में स्थित गेल (इण्डिया) लिमिटेड के विविध कार्य केन्द्रों में और अन्य गैस पाइप लाइन या प्रसंस्करण तथा द्रवित पेट्रोलियम गैस पाइप लाइन या प्रसंस्करण तथा द्रवित पेट्रोलियम गैस पाइल लाइन संस्थापन, नगर क्षेत्रों के अलावा आवासीय, कार्यालय प्रयोजन के लिए पट्टे पर लिए गए और कंपनी के स्वामित्व वाले स्थान।

यह दिनांक 18 मई, 2001 की अधिसूचना का.आ. 1110 के अधिक्रमण में है।

[संख्या एल-11011/1/101-जी.पी.]

स्वामी सिंह, निदेशक

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 7th May, 2004

S.O. 1140.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby appoints the officers mentioned in column (2) of the Table below, being the officers equivalent to the rank of a Gazetted Officer of the Government, to be estate officers for the purpose of the said Act, who shall exercise the power conferred, and perform the duties imposed, on the estate officers by or under the said Act, within the local limits of their respective jurisdiction, in respect of the public premises specified in the corresponding entry in column (3) of the said Table :—

TABLE

Sl. No.	Designation of the Officer	Categories of public premises and local limits of jurisdiction
1	2	3
1.	Chief Manager (Human Resource) or Senior Manager (Human Resource) or Manager (Human Resource), GAIL (India) Limited, Kolkata (West Bengal).	Leased and company owned premises for residential, office purpose, besides townships, in various work centres and other Gas Pipeline or Processing Installations of GAIL (India) Limited in Assam, Bihar, Orissa, Tripura and West Bengal.
2.	Chief Manager (Human Resource) or Senior Manager (Human Resource) or Manager (Human Resource), GAIL (India) Limited, Rajahmundry (Andhra Pradesh).	Leased and company owned premises for residential/office purpose, besides townships, in various work centres and other Gas Pipeline or Processing Installations of Liquefied Petroleum Gas Pipeline Installations of GAIL (India) Limited in Andhra Pradesh, Karnatka, Kerala, Pondicherry and Tamil Nadu.
3.	Senior Manager (Human Resource) or Manager (Human Resource) or Deputy Manager (Human Resource), GAIL (India) Limited, Mumbai (Maharashtra).	Leased and company owned premises for residential, office purpose, besides townships, in various work centres and other Gas Pipeline or Processing Installations of GAIL (India) Limited in Maharashtra.
4.	Senior Manager (Human Resource) or Manager (Human Resource) or Deputy Manager (Human Resource), GAIL (India) Limited, Vadodara (Gujarat).	Leased and company owned premises for residential, office purpose, besides townships, in various work centres and other Gas Pipeline or Processing Installations, Liquefied Petroleum Gas Pipeline Installations of GAIL (India) Ltd. in Gujrat.
5.	Senior Manager (Human Resource) or Manger (Human Resource) or Deputy Manager (Human Resource), GAIL (India) Limited, Vijaipur (Madhya Pradesh)	Leased and company owned premises for residential, office purpose, besides townships, in various work centres and other Gas Pipeline or Processing Installations of GAIL (India) Limited in Madhya Pradesh.

1	2	3
6.	Senior Manager (Human Resource) or Deputy Manager (Human Resource), Manger (Human Resource) or GAIL (India) Limited, Jaipur (Rajasthan).	Leased and company owned premises for residential, office purpose, besides townships, in various work centres and other Gas Pipeline Installations, Liquefied Petroleum Gas Pipeline Installations of GAIL (India) Limited in Rajasthan and Haryana.
7.	Senior Manager (Human Resource) or Manger (Human Resource) or Deputy Manager (Human Resource), GAIL (India) Limited, Pata (Uttar Pradesh).	Leased and company owned premises for residential, office purpose, besides townships, in various work centres and other Gas Pipeline or Processing Installations, Liquefied Petroleum Gas Pipeline Installations of GAIL (India) Limited, in (Uttar Pradesh)
8.	Chief Manager (Human Resource) or Manager (Human Resource), Senior Manager (Human Resource), GAIL (India) Limited, New Delhi (National Capital Territory of Delhi).	Leased and company owned premises for residential, office purpose, besides townships, in various work centres and other Gas Pipeline or Processing Installations, Liquefied Petroleum Gas Pipeline Installations of GAIL (India) Limited, in National Capital Territory of Delhi, National Capital Region of Delhi, Punjab and Chandigarh.

This is in supersession of earlier Notification S.O. 1110 dated 18th May, 2001.

[No. L-11011/1/101-GP]

SWAMI SINGH, Director

श्रम मंत्रालय

नई दिल्ली, 22 अप्रैल, 2004

का. आ. 1141.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा.को.को.लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II धनबाद के पंचाट (संदर्भ संख्या 119/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-04-2004 को प्राप्त हुआ था।

[सं. एल-20012/304/92-आई.आर. (सी-1)]

एस.एस. गुप्ता, अवर सचिव

MINISTRY OF LABOUR

New Delhi, the 22nd April, 2004

S.O. 1141.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 119/93) of the Central Government Industrial Tribunal/Labour Court, II Dhanbad now as shown in the annexure, in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 19-04-2004.

[No. L-20012/304/92-IR (C-1)]

S.S.GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

SHRI B. BISWAS, PRESIDING OFFICER

In the matter of an Industrial Dispute under Section 10 (1) (d) of the I.D. Act., 1947.

Reference No. 119 of 1993

PARTIES : Employers in relation to the management of Kharkhari Colliery of M/s. B.C.C.L and their workman.

APPEARANCES :

On benalf of the workman : Mr. D. Mukherjee, Advocate.

On behalf of the employers : Mr. D.K. Verma, Advocate.

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 24th March, 2004.

AWARD

The Govt. of India, Ministry of Labour, in exercise of the power conferred on them under Section 10(1) (d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(304)/92-I.R. (Coal-I), dated, the 16th August, 1993.

SCHEDULE

"Whether the action of the General Manager, Govindpur Area of M/s. B.C.C.L., P.O. Sonardih, Distt. Dhanbad in denying placement in Badli Miner/Loader to S/Shri Basrat Khan and 36 others in the list attached is justified? If not, to what relief are the concerned workman entitled?"

2. The case of the concerned workman according to the written statement submitted by the sponsoring Union on their behalf in brief is as follows:—

The sponsoring Union submitted that the concerned workman were engaged by the erstwhile owner of Kharkharee Colliery as stone cutter in the underground. They submitted that these workman used to perform their duties of stone cutting which was permanent in nature and also within the prohibited category of job under direct control and supervision of the management. They submitted that all the implements for execution of the job were being supplied by the management. They submitted that these workman till 1978 continuously worked directly under the management and their names were duly recorded in the Form B Register of the management but the management without showing any reason and also without complying in mandatory provision of law illegally and arbitrarily stopped them from work. They alleged that in the year 1982 one of the workman viz. Naru Bairi who was also working with them was taken on the roll of the company as Badli Miner/Loader. Accordingly, the concerned workmen submitted representation to the management for their employment atleast as Badli Miner/loader through R.C.M.S and that time after ascertaining the facts of employment of Naru Bairi assured them for favourable decision but did nothing subsequently. As a result, the sponsoring union raised an Industrial Dispute before the ALC (C) Dhanbad for conciliation and in course of hearing management submitted comments stating that no employer-employee relationship was existed in between them on the ground that the concerned workmen were stopped from duty in the month of April, 1972 i.e. prior to the date of nationalisation though they categorically denying this fact submitted that actually they were stopped from work in the year 1978. As the conciliation matter failed the present reference has come into existence for adjudication.

Accordingly the sponsoring Union on behalf of the concerned workmen submitted prayer to pass award directing the management to reinstate the concerned workmen in service with retrospective effect and also with full back wages along with consequential relief.

3. Management on the contrary after filing written statement-cum-rejoinder have denied all the claims and allegations which the sponsoring Union asserted in the written statement on behalf of the concerned workmen. They submitted that Sri Doula Mia, Zonal Secretary, Bhagmara Zone of the Union named Bihar Colliery Mazdoor Sabha made a complaint dt. 24-8-92 to the ALC(C), Dhanbad to the effect that the concerned workmen were the workmen of Kharkharee Colliery and they were stopped from their duties by the management in the year 1973. In the said Complaint he made an allegation to the effect that the concerned workmen started working as casual stone cutters at Kharkharee Colliery with effect from 1-5-72 and they continued to work there till 1978. They disclosed that on perusal of a copy of the aforesaid complaint forwarded by ALC(C), Dhanbad, they examined the Form B Register of Kharkharee Colliery of pre-nationalisation period and observed that these persons *viz.* Basrat Khan (Sl. No. 1), Sk. Kurban Khan (Sl. No. 29) and Bano Dhibar (Sl. No. 22) had worked as contractors workers at Kharkharee Colliery and they were discontinued from 24-4-72 and were no longer on the roll of the colliery on and from 1-5-72. They submitted that the said three persons were contractors workers and their services stood terminated as soon as the contract was over at Kharkharee Colliery. They disclosed that the rest of the persons named in the list enclosed with the complaint petition of the Union were not in the employment of Kharkharee colliery in any capacity over and under the period of private management prior to 1-5-72. No letter dt. 27-12-73 could be traced to indicate that the concerned persons demanded work from the management of Kharkharee Colliery. They submitted that all workmen employed as casual workers during the period from 74-78 were provided with identity cards of special type meant for casual workers. Accordingly they submitted that if any of the concerned workman had ever worked as casual stone cutter, he should have been provided with identity card, his name should have been entered in the Form B Register and also he should have been provided with bonus card. He also would be the member of C.M.P.F. They disclosed that sponsoring Union failed to produce any such document to show that any of the concerned workmen had ever worked at Kharkharee Colliery during the period from 1-5-73 to 1978, in pursuance to their alleged representation dt. 27-12-78. They submitted that the claim of the sponsoring Union is absolutely fake and motivated and for which they are not entitled to get any relief in view of their prayer.

4. POINTS TO BE DECIDED

"Whether the action of the General Manager, Govindpur Area of M/s. B.C.C.L, P.O. Sonardih, Dist. Dhanbad in denying placement in Badli Miner/ Loader to Shri Basrat Khan and 36 others in the list attached is justified? If not, to what relief are the concerned workmen entitled?"

5. FINDING WITH REASONS

It transpires from the record that both the management and the sponsoring Union have examined two witnesses each with a view to substantiate their claim and counter claim.

WW-1 who is one of the concerned workman and who deposed for self and also on behalf of other concerned workmen during evidence disclosed that they started working as stone cutter in the underground of Kharkharee Colliery since 1972. He disclosed that before resuming duties every day they used to collect instruments from the godown and cap lamp from the cap lamp stores and there after they would report underground manager/overman for

duty. He further disclosed that before starting their duties they used to note their attendance to the attendance keeper. He submitted that the nature of job which they used to perform was continuous in nature and they worked under the management for more than 240 days in each year till they were stopped from work by the management. He alleged that during the period from 1973 to 1976 the management though appointed some workmen as badli miner/loader they did not consider their claim.

During his evidence this witness has failed to produce his appointment letter or identity card issued by the management to establish his claim that he and other workmen worked at Kharkharee Colliery as stone cutter directly being engaged by the management. WW-2 during his evidence disclosed that he being Zonal Secretary, Bihar Colliery Mazdoor Sabha raised the industrial disputes for the concerned workmen and he signed all papers being the Zonal Secretary of their Union. During his evidence he disclosed further that the concerned workman being the stone cutters of Kharkharee Colliery worked their from 1972 to 1978 continuously. During his evidence zerox copies of Form 'C' register wherein the concerned workmen noted their attendance were marked as Ext. W-2 to Ext.W-2/37. The page marked as Ext. W-2 shows noting to the effect "Attendance Register from 21-12-77 to 16-6-78". The attendance sheet marked as Ext. W-2/1 has disclosed the names of seven workmen but does not disclose for which period this attendance sheet was prepared. The attendance sheet marked as Ext. W-2/2 is for the period from 17-1-78 to 23-1-78 for 23 workmen. The attendance sheet marked as Ext. W-2/3 is for the period from 24-1-78 to 30-1-78 also for 23 workmen. Attendance sheet marked as Ext. W-2/4 is in respect of 21 workmen for the period from 14-2-78 to 20-2-78. The attendance sheet marked as Ext. W.2/5 shows attendance of 17 workmen but it cannot be ascertained for which period they worked. The attendance sheet marked as Ext. W2/6 shows attendance of 16 workers for the period from 28-2-78 to 6-3-78. The attendance sheet marked as Ext.W-2/7 shows attendance of 23 workmen for the period from 7-3-78 to 13-3-78. The attendance sheet marked as Ext. W-2/8 shows attendance of 19 workmen for the period from 29-4-78 to 5-5-78. The attendance sheet marked as Ext. W-2/9 shows attendance of 23 workmen for the period from 29-4-78 to 5-5-78. The attendence sheets marked as Ext. W-2/10 to W-2/12 shows attendance of 61 workmen for the period from 6-5-78 to 12-5-78. The attendance sheet marked as Ext. W-2/13 to Ext. W-2/16 shows attendance of 93 workmen for the period from 3-5-78 to 19-5-78. The attendance sheet marked as Ext. W-2/22 to Ext. W-2/26 shows attendance of 116 workmen. The attendance sheet marked as Ext. W-2/27 to Ext. W-2/31 shows attendance of 115 workmen for the period from 3-6-78 to 9-6-78. The attendance sheet marked as Ext. W-2/32 to Ext. W-2/37 shows attendance of 138 workmen for the period from 10-6-78 to 16-6-78. Accordingly it is clear that the sponsoring Union submitted attendance sheet for different workmen to different in numbers for the period from 17-1-78 to 16-6-78 only and not for the entire period from 1-5-72. From these attendance sheet only for the period of six months there is no scope to draw any conclusion that these attendance sheet belonged at Kharkharee Colliery and the same were maintained by the management as per From C register as it does not bear any office seal or signature of any official of the management. The concerned dispute is in respect of 37 workmen but these attendance sheets shows attendance of workmen in different numbers on different dates and moreover it shows further that the workmen who signed these attendance sheet had worked for a limited period. As such credibility of these attendance sheet relating to attendance of the concerned workmen has come to a question. It is the specific claim of WW-1 that since 1972 till they were stopped from in the year 1978 they worked under the management as stone cutter in the underground for more than 240 days in each year. Excepting these attendance sheet the sponsoring Union in course of hearing have failed to produce any cogent document which can be relied on in support of their claim.

On the contrary from the evidence of MW-1 and MW-2 it is evidence that they never prepared any claim for bonus of the concerned workmen during the period in question though during that relevant period they worked as bonus clerk and bill clerk. MW-1 during his evidence relying on the bonus register for the year 1974 submitted that the names of the concerned workmen were not recorded in the said register to show that they received any bonus during that year.

It is the specific claim of the management that they provided identity card to all casual workmen employed during the period from 1974-78 not only but also their names were recorded in the From B Register. Those workmen also were provided with bonus card and also they were considered as memebrs of C.M.P.F. Considering the evidence of WW-1, WW-2 and also considering the facts disclosed in the written statement it transpires that since 1972 the concerned workmen started working at Kharkharee colliery in the underground as stone cutter and in that capacity they worked continuously till 1978. WW-1 further disclosed that they used to receive their wages from the cash office. It is not the case of the sponsoring Union that the concerned workmen started working in the said colliery as stone cutter which is prohibited degree of job being engaged by any contractor. It is also not the case of the sponsoring Union that the said contractor under whom the concerned workmen started working was a camouflage one. Accordingly, there is no scope to consider if the job of stone cutting performed by the concerned workmen through contractor was a prohibited job as per Sec. 10 of Contract Labour (Regulation and Abolition) Act. It is really astonishing to note that inspite of working under the management from 1972 to 1978 continuously and inspite of

receiving wages from the office of the management the sponsoring Union have failed to produce a single scrap of paper to substantiate their claim. It is the procedure that copy of wagesheet is handed over to each workman at the time of payment of wages. Therefore, their wagesheets could have been considered as vital proof to show that being engaged directly by the management they worked for such long period in the underground as stone cutter.

It is the claim of the sponsoring Union that in the year 1978 R.C.M.S. Union submitted representation to the management for regularisation of the concerned workmen as they performed prohibited category of job. It has been further submitted that when management did not accede to the claim of R.C.M.S. Union an Industrial dispute was raised before the ALC (C), Dhanbad for conciliation. On the contrary it transpires from the written statement submitted by the management that Doula Mia, Zonal Secretary, Bhagmara Zone made a complaint dt. 24-8-92 to ALC (C), Dhanbad to the effect that management stopped work of the concerned workmen in the year 1973. After receiving notice from ALC (C), Dhanbad they enquired into the matter and found that three workmen viz. Basrat Khan (Sl. No. 1), Bano Dhibar (Sl. No. 22) and Sheikh Kurban Khan (Sl. No. 29) worked under the contractor at Kharkharee Colliery during its erstwhile owner but as they discontinued from 24-4-72 they were no longer on the roll of the colliery. They categorically denied the fact that those three workmen performed the job of stone cutting under the contractor. As it is not the case of the sponsoring union that the concerned workmen were engaged by the contractor to perform prohibited category of job also as it is not their case that the said contractor was a camouflage one there is no scope to consider this aspect in the matter of the claim of the sponsoring Union.

It is admitted fact of the present sponsoring union that R.C.M.S. Union submitted representation to the management to consider the claim of the concerned workmen. It is seen that subsequently R.C.M.S. as did not persue the matter the present sponsoring union came forward in the year 1992 and lodged complaint against the management before ALC(C) as they stopped work of the concerned workmen illegally from 1978. Therefore, it is clear that after a lapse of about fourteen years Doula Mia, Zonal Secretary, Bihar Colliery Mazdoor Sabha raised an Industrial dispute but has failed to assign any reason why such abnormal delay was made in raising such dispute and inspite of this fact ALC(C) issued notice to the management for hearing on conciliation proceeding. The management as categorically denied the claim of the sponsoring Union the said Conciliation proceeding did not yield any fruitful result.

If the principle of the evidence act is taken into consideration in such position onus absolutely shifts on the sponsoring Union to establish that the concerned workmen being stone cutter worked continuously under the management for long six years. Inspite of careful consideration of the evidence of the sponsoring union I find no hestitation to say that they have frustrated this Tribunal in support of their claim by adducing substantial evidence to corroborate the facts disclosed in their pleadings.

Though the sponsoring union have failed to produce any cogent evidence with a view to substantiate their claim learned Advocate on their behalf relying on the following decision submitted that the management illegally and arbitrarily stopped the concerned workmen from the service.

6. In course of hearing Ld. Advocate for the sponsoring Union referred to decisions reported in 1999(2) LLN 612(SC), 1985 Supreme Court Cases (L&S)975, 1996-(II) 435 (SC), S.C.L.J. Vol.15 P.112 (SC), SCLJ Vol. (VI) P.3867(SC), S.C.L.J. Vol. III SC-P.1557, 1997 LLR 288 (SC) 1995 II CRL 194, 1987 Lab I.C. P. 619(SC), FLR-1990 (60) P-20 (SC) in support of their claim.

7. In the decision reported in 1999(2) LLN 612 in connection with Haryana State Electricity Board their Lordship of the Hon'ble Apex Court in para 13 observed to the effect that "there is however, a total unaniminity of judicial pronouncement to the effect that in the event, the Contract Labour is employed in an establishment for seasonal workings, question of abolition would not arise but in the event of the same being of perennial in nature, that is to say, in the event of the engagement of Labour force through in termediary which is otherwise in the ordinary course of events and involve continuity in the work, the legislature is candid enough to record its abolition since involvement of contractor may have its serious evil of labour exploitation and thus he ought to go out of scene bringing together the principal employer and the contract labourers rendering the employment as direct and resultantly a direct employee." In arriving into this conclusion their Lordship referred to the decision of Air India Statutory Corporation Vs. United Labour Union [1993(1)LLN 75].

14. Again the decision reported in 1985 Supreme Court cases (L&S) 975 in connection with Reserve Bank of India and others Their Lordships of the Hon'ble Apex Court observed that striking out the names of workmen from rolls amounts to retrenchment covered by Sec. 25F of the I.D. Act if it is found that the workmen actually worked for a continuous period of more than 240 days in a year including Sundays and other paid holidays.

15. In the decision reported in 1996 II-LLJ P. 435(SC) in connection with the Employees State Insurance Corporation, Hyderabad Vs. M/s. Rajakamal Transport & Anr. Their Lordships of the Hon'ble Apex Court

observed to the effect. "It is seen that the Insurance Court after elaborate consideration found as a fact, the appellants have the control over loading and unloading of the goods entrusted to the appellants. The appellants regular business is transportation of goods entrusted to as carrier. When the goods are brought to the warehouse of the appellants, necessarily the appellants have to get the goods loaded or unloaded through the Hemalis and they control the activities of loading and unloading. It is true as found by the Insurance Court that instead of appellants directly paying the charges from their pocket, they collect as a part of the consideration for transportation of the goods from the customers any pay the amount to the Hemalis. The test of payment of salary or wages in the facts of this case is not relevant consideration. What is important is that they work in connection with the work of the establishment. The loading and unloading of the work is done at their directions and control." While in the decision reported in S.C.L.J. Vol. 15 P-112 (SC) in connection with the case of Hussainbhai, Calicut Vs. The Lath Factory Thezhil, Ali, Union Kozhikode and others Their Lordships observed "The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers subsistence, skill and continued employment. If he for any reason chokes of the worker is virtually laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex-contract is of consequence when, on lifting the veil or looking at the conspectus of factors governing employment, discern the naked truth, though drapped in different perfect paper arrangement, that the real is the management not the intermediate contractor, Myriad devices, half hidden unfold after fold of legal forum depending on the degree of concealment needed, the type of industry, the local conditions and the like may be restored to when labour legislation casts welfare obligation on the real employer, based on Articles 38, 39, 42, 43 and 43-A of the Constitution. The Court must be astute to avoid the mischief and achieve the purpose of the land and not to misled by the maya of legal appearances.

If the livelehood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make believe trapping of detachment from the management cannot snap the real life bond. The story may vary but the noference defines ingenuinity. The liability cannot be shaken off.

Again in the decision reported in LLJ Vol. II 1964 P-633 (SC) in D.C. Dewan Mohidaan Sahib and sons and another Vs. United Bidi Workers Union, Salem and another Their Lordship of the Hon'ble Apex Court observed to the effect : "On a review of entire evidence in the instant case the Industrial Tribunal found that the system of bidi manufacture through the so called intermediaries (styled as contractors) was a mere camouflage devised by the bidi manufacture. The Industrial Tribunal also found that the so called contractors were indigent persons and served no particular duties and discharged no special functions. Raw materials were furnished by the manufacturers to be manufactured into finished product by the workmen and the contractors had no other functions except to the raw materials to the workmen and gather the manufactured materials. It, therefore, hold were not independent contractors and were mere employees or were functioning as branch managers of various factories, their remuneration being dependent upon the work turned out. Hence it held that the bidi rollers were the employees of the bidi manufacturers and not of the socalled independent contractors. The Writ petition preferred by the employer to get the award quashed was however allowed but in the Writ appeal preferred by the concerned workmen the conclusions of the industrial Tribunal were upheld."

Further in the decision reported in 1997 LLR 288 (SC) arising out of Air India Statutory Corporation Vs. United Labour Union and others Their Lordships of the Hon'ble Apex Court observed "when the contract labour system is abolished by necessary implication, the principal employer is under obligation to absorb the contract labours. The linkage between the contractor and the employee stood snapped and direct relationship stood restored between the principal employer and the contract labour as its employees. Considered from perspective all the workmen in the respective services working on contract labour are required to be absorbed in the establishment of the Principal employer."

In the decision reported in 1995 II CLR 194 (SC) in Parimal Ch. Laha and Ors. Vs. Life Insurance Corporation of India and Ors. Their Lordships of the Hon'ble Apex Court observed "that the canteen workers are in fact the employees of the respondent corporation and they are entitled to minimum of the salary paid to Class IV employees of the Corporation."

In Catering cleaners of South Eastern Railway Vs. Union of India reported in 1987 Lab I.C. 619 Their Lordships of the Hon'ble Apex Court observed that "on the facts and the report of the Parliamentary Committee of petitions on the question of employing catering cleaners on contract labour system that the work of cleaning catering establishment and Pantry car is necessary and incidental to the Industry or business of the Southern Railway and so requirement (a) of Sec. 10(2) is satisfied, that it is of perennial nature and so requirement (b) is

satisfied that the work is done through regular workmen in most railways in the country and so requirement (c) is satisfied and that the work requires the employment of sufficient number of whole time workmen and so requirement (d) is also satisfied. Thus all the relevant factors mentioned in Sec. 10(2) appears to be satisfactorily accounted for. In addition is the factor of profitability of the catering establishment.''

In Shankar Mukherjee & others Vs. Union of India and others reported in FLR. 1990 (60) P. 20(SC) Their Lordships of the Hon'ble Apex Court observed : "It is surprising that more than forty years after the independent, the practices of employing labour through contractors by big companies including public sector companies is still being accepted as a normal feature of labour employment. There is no security of service to the workmen and their wages are for below than that of the regular workmen of the company. This Court in Standard Vacuum Refining Co. of India Ltd. v. its workmen (1) and catering cleaners of Southern Railway (2) has disapproved the system of contract labour holding it to be 'archaie', 'Primitive' and of painful nature. The system, which is nothing but an improved version of bonded labour, is sought to the abolished by the Act. The Act is an important piece of social legislation for the welfare of labourers and has to be liberally construed.''

Learned Advocate for the workmen in course of extending argument submitted that the alleged contractor was a camouflage one and it was the management who indisguise of the said camouflage contractor exploited the services of the workmen for years together. Learned Advocate submitted that the concerned workmen should be considered as regular workmen of the management and in support of this claim he relied on the decision reported in S.C.L.J. Vol. VI P. 3867. In the said decision arising of M/s. Basti Sugar Mills Ltd. and Ram Ujagar, Their Lordships observed. "It was with a view to remove the difficulty in the way of workmen employed by contractors that the definition of employer has been extended by sub-clause (iv) of Sec. 2 (j). The position thus is (a) that the respondents are workmen within the management of Sec. 2 (z), being persons employed in the industry to do manual work for reward and (b) they were employed by a contractor with whom the appellant company had contracted in the course of conducting the industry for the executions by the said contractor of the work of removal of press mud which is ordinarily a part of the Industry. It follows, therefore, from Sec. 2 (z) read with sub clause (iv) of Sec. 2 (i) of the Act that they are workmen of the appellant company and the appellant company is their employer."

On the contrary learned Advocate for the management relying on the decision of the Hon'ble Apex Court reported in 2001 Lab I.C. 3656 submitted that there is also no scope for direct absorption of the concerned workmen considering them as regular employees even if it is held that they were camouflage contract labour. Their Lordships of the Hon'ble Apex Court observed in the decision referred to above that ''Neither Section 10 of the Contract Labour (Regulation and Abolition) Act or any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under Sub-Sec. (i) of Section 10 prohibiting employment of contract labour, in any process, operation or other works in any establishment. consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment. Accordingly Their Lordships of the Hon'ble Court overruled the judgement of Air India's case. Their Lordship in this judgement further observed that on issuance of prohibition notification under Sec. 10 (1) of the Contract Labour (Regulation and Abolition) Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the condition as may be specified by it for that purpose in the light of part-6 of the judgement. Hon'ble Court in para-6 observed if the contract is found to be genuine and prohibition notification under Section 10(1) of the Contract Labour (Regulation and Abolition) Act in respect of the concerned establishment has been issued by the appropriate Govt, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process operation or other work of the establishment the principal employer intends to employ

regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and if necessary by relaxing the conditions as to maximum age appropriating taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualification.

Therefore, from the decision referred to above it is clear that when there is prohibitory order U/S. 10(1) of the Contract Labour (Regulation and Abolition) Act and knowing fully aware of that order if the management engages contract labour thereby it will not confer any right to place claim for direct absorption of the contract labour in the organisation but if it is established that the contractor is a ruse/camouflage in that case the contract labours should be considered as employees of the management though in the matter of their absorption the guidelines given in para-6 should be followed.

I have carefully perused all the decisions referred to by the Ld. Advocate for the sponsoring Union as well as Ld. Advocate for the management.

Considering my discussion above it is clear that as the sponsoring Union did not make out any case against the management U/s. 10 of the Contract Labour (Regulation & Abolition) Act question of fixing any sort of liability on the management does not arise to that effect. Application of Sec. 25F of the Industrial Dispute Act only will come into question if it is established with cogent evidence that the concerned workmen were discharged/terminated by the management without giving any notice or paying any compensation. In the decisions reported in 2003 (96) FLR 492 Supreme Court Their Lordhships of the Hon'ble Apex Court observed that onus absolutely rests on the workmen to establish that they worked under the management for more than 240 days in a year and inspite of rendering their service for such period they were illegally stopped from work by the management. The sponsoring Union inspite of getting ample opportunity have lamentably failed to establish that the concerned workmen worked under the management in the underground as stone cutter from 1972 to 1978 continuously and for more than 240 days in each year. Untill and unless this vital fact is established with reasonable certainty there is least scope to arrive into any such conclusion in support of their claim. I find no hesitation to say that the sponsoring Union have lamentably failed to establish such claim. Accordingly, just on the basis of submission of the sponsoring Union I find no scope to draw any conclusion that the concemed workmen as stone cutter worked under the management from 1972—78 and thereafter they were illegally stopped from duty and for which they are not entitled to get any relief. In view of their prayer.

In the result, the following Award is rendered :—

"The action of the General Manager, Govindpur Area of M/s. B.C.C.L., P.O. Sonardih, Dt. Dhanbad in denying placement in Badli Miner/Loader to S/Shri Basarat Khan and 36 others in the list attached is justified. Consequently, the concerned workmen are not entitled to get any relief."

B. BISWAS, Presiding Officer

List of Workers, Working as Stone Cutter Working Loader.

1. Basarat Khan.
2. Manau Baouri.
3. Nirodh Bauri.
4. Surya Baouri.
5. Sukant Baouri.
6. Maighu Rawani.
7. Biatu Rawani.
8. Dinu Rawani.
9. Sukhdeo Rawani.
10. Sukh Lal Rawani.
11. Paltu Rawani
12. Haider Khan.
13. Paltu Bauri.
14. Sheikh Yusuf.
15. Sheikh Amin.
16. Wahid Khan.
17. Sheikh Masluddin
18. Sheikh Suleman.
19. Sheikh Mianjan.
20. Jan Mohammad.
21. Sheikh Sagir.
22. Banu Dhibar.
23. Ishad Ansari.
24. Sheikh Idris.

25. Sheikh Settar
26. Sultan Khan
27. Sheikh Hanif
28. Sheikh Shoheil
29. Sheikh Kurban
30. Sheikh Reiuf
31. K Chhote Kurban
32. Sheikh Sultan
33. Ishak Khan
34. Sheikh Shahid
35. Sheikh Alam
36. Sheikh Ramjan
37. Bhuban Ranjan Chakraborty

नई दिल्ली, 22 अप्रैल, 2004

का. आ. 1142.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा०को०को०लि० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 127/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-04-2004 को प्राप्त हुआ था।

[सं. एल-20012/460/97-आई.आर. (सी-1)]
एस.एस. गुप्ता, अवर सचिव

New Delhi, the 22nd April, 2004

S.O. 1142.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 127/ 2001) of the Central Government Industrial Tribunal-cum-Labour Court, II Dhanbad now as shown in the annexure, in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 19-04-2004.

[No. L-20012/460/97-IR (C-1)]
S. S.GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri B. Biswas, Presiding Officer

In the matter of an Industrial Dispute under Section 10 (1) (d) of the I.D. Act., 1947.

Reference No. 127 of 2001

PARTIES: : Employers in relation to the management of Amlabad Colliery of M/s. B.C.C.L and their workman.

APPEARANCES:

On benalf of the workman : Mr. S. C. Gaur, Advocate.

On behalf of the employers : Mr. H. Nath, Advocate.

State : Jharkhand Industry : Coal.

Dated, Dhanbad, the 15th March, 2004.

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1) (d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/460/97(C-I), dated, the 27th April, 2001.

SCHEDULE

"KYA BHARAT COKING COAL LIMITED AMLABAD COLLIERY KEY PRAVANDHTANTRA DWARA SRIMATI MAJHIWAIN, T.R. MAZDOOR KO DINANK 1-7-96 SEY SEVA NIVRIT KIYA JANA UCHIT HAI TATHA KYA NATIONAL COAL WORKERS KO MAANG KI UNHE PUNAH SEVA MEIN LIYA JAE, TATHA PUNAH AAYU NIRDHARAN KE LIYE APEX CHIKITSA BOARD BHEJA JAE IS SAMBANDH MEIN KYA NIRDESH AAVASHYAK HAI ?"

2. The case of the concerned workman according to the written statement submitted by the sponsoring Union on he behalf in brief is as follows:—

The sponsoring Union submitted that the concerned workman got her employment by the erstwhile owner of Amlabad Colliery in the year 1969. At the time of her entry in the service her date of birth was recorded in the Form B Register as 12-5-1948 on the basis of her School Leaving Certificate. They submitted that as per date of birth recorded in the Form B Register her due date of retirement from service was 11-5-98. But the management illegally and arbitrarily superannuated her from service with effect from 1-7-96 on the basis of wrong recording of her age. They submitted that before her superannuation from service in the year 1995 she submitted representation annexing Xerox copy of School Leaving Certificate with a request to correct her date of birth according to date of birth recorded therein. She further made request to refer her to Apex Medical Board for determination of her age complying the provision as laid down in Implementation Instruction No. 76 of 1988 formulated by J.B.C.C.I. They alleged that instead of considering her prayer management superannuated her from service. Accordingly, they raised an industrial dispute before the ALC(C) for conciliation which ultimately resulted

reference to this Tribunal for adjudication.

The sponsoring union in the circumstances submitted their prayer to pass award directing the management to reinstate the concerned workman to her service accepting her date of birth recorded in the school leaving certificate along with back wages and other consequential relief.

3. Management on the contrary after filing written statement-cum-rejoinder have denied all the claims and allegations which the sponsoring Union asserted in the written statement submitted on behalf of the concerned workman.

Management submitted that the concerned workman was appointed as Wagon Loader by the erstwhile owner at Amlabad Colliery in the month of October, 1969. They disclosed that at the time of her entry in the service her all particulars including her date of birth as 1-7-36 were recorded in the Form B Register. Acknowledging, correctness of all entries in the Form B Register she put her L.T.I therein. They submitted that thereafter on 24-4-90 service excerpt was given to her wherein also the same date of birth was recorded. The concerned workman without raising any dispute relating to her date of birth recorded therein returned back the said service excerpt to the management putting her L.T.I. therein. They categorically denied the fact about production of School Leaving Certificate wherein her correct date of birth was recorded. Accordingly she was rightly superannuated from her service relying on the date of birth recorded in the Form B Register without violating the principle of natural justice. In the circumstances, they submitted prayer to pass award rejecting her claim of reinstatement in service on the basis of date of birth recorded in the alleged School Leaving Certificate.

4. POINTS TO BE DECIDED

"KYA BHARAT COKING COAL LIMITED AMLABAD COLLIERY KEY PRAVANDH-TANTRA DWARA SHRIMATI MAJHIWAIN, T.R. MAZDOOR KO DINANK 1-7-96 SEY SEVA NIVRIT KIYA JANA UCHIT HAI TATHA KYA NATIONAL COAL WORKERS KO MAANG KI UNHE PUNAH SEVA MEIN LIYA JAE, TATHA PUNAH AAYU NIRDHARAN KE LIYE APEX CHIKITSA BOARD BHEJA JAE IS SAMBANDH MEIN KYA NIRDESH AAVASHYAK HAI?"

FINDING WITH REASONS

5. It transpires from the record that neither concerned workman nor the management adduced any oral evidence with a view to establish their respective claim. However, management relied on the Form B Register and service excerpt wherein date of birth of the concerned workman had been recorded, in support of their claim.

Considering the facts disclosed in the pleadings of both sides there is no dispute to hold that the concerned workman got her appointment at Amlabad colliery in the year 1969. The concerned workman as it appears from the record was a wagon loader. It is the specific claim of the sponsoring union that at the time of entry in the service her date of birth in the Form B Register by the erstwhile owner was recorded as 12-5-1948 relying on her School Leaving Certificate. It is their contention that on the basis of the said date of birth recorded in the Form B Register due date of her superannuation was in the year 1998. They disclosed that in the year 1995 concerned workman came to know that relying on erroneous recording of her date of birth she would be superannuated from her service in the year 1996. Accordingly she submitted representation to the management annexing her School leaving certificate wherein her date of birth was recorded as 12-5-48 with a prayer for rectification of her date of birth. She further made an appeal before the management to send her before Apex Medical Board for her medical examination as well as for assessment of her age but management without considering her prayer superannuated her from her service with effect from 1-7-96 illegally, arbitrarily and violating the principle of natural justice.

Therefore according to the submission of the sponsoring Union date of birth of the concerned workman was recorded in the Form B Register as 12-5-48 relying on School Leaving Certificate. Their further contention is that in the year 1995 the concerned workman produced her School Leaving Certificate to the management wherein her date of birth was recorded as 12-5-48. But management did not consider necessary to pay any importance to the same.

On the contrary management relying on the Form B Register submitted that date of birth of the concerned workman was recorded as 33 years in the month of October, 1936 and relying on that age her date of birth was assessed as 1-7-36. They further submitted that in the year 1990 service excerpt was handed over to the concerned workman wherein also the same date of birth was recorded. The concerned workman after perusing the service excerpt returned back the same making her endorsement therein without raising any dispute relating to her date of birth recorded therein. I have carefully considered both the documents i.e. copy of Form B Register and copy of service excerpt which was handed over to the concerned workman. From both the documents of transpires that age of the concerned workman was recorded as 33 years as on October, 1969 i.e. on the date of her entry in the service. No satisfactory explanation is forthcoming on the part of the sponsoring Union why the concerned workman remained silent inspite of getting her knowledge that wrong date of birth was recorded in the service excerpt which was handed over to her by the management. The concerned workman relying on School Leaving Certificate submitted

that her date of birth was 12-5-48. Inspite of claiming so the concerned workman in course of hearing did not consider necessary to produce the same with a view to justify his claim. The sponsoring Union alleged that when such dispute came into existence there was scope of send the concerned workman before Apex Medical Board for assessment of her age complying the provision as laid down in Implementation Instruction No. 76 of J.B.C.C.I. I have carefully considered the said Implementation Instruction No. 76 and considering the same I have failed to find out the basis of the submission of the sponsoring union.

Initial onus absolutely rests on the sponsoring Union to establish with reasonable certainty that date of birth of the concerned workman was 12-5-1948. But I find no hesitation to say that they have lamentably failed to justify their claim. It is to be borne into mind that Form B Register is considered as Statutory Register under the Mines Act and for which all entries therein carries legal value until and unless it is established by the cogent evidence that there was wrong entry either in respect of date of birth or in respect of any other matter.

Considering all materials on record I find scope to say that the sponsoring Union have failed to establish that date of birth of the concerned workman was wrongly recorded in the Form B Register. Mere fact disclosed in the written statement cannot be considered as substantive piece of evidence unless the same is substantiated by cogent evidence. In the circumstances, I find no scope to uphold the contention of the sponsoring Union that the management illegally, arbitrarily and violating the principle of natural justice superannuated the concerned workman from her service relying on her wrong date of birth. I therefore, hold in view of my discussion above that the concerned workman is not entitled to get any relief.

In the result the following Award is rendered :—

"BHARAT COKING COAL LIMITED KEY PRAVANDHTANTRA KEY DWARA SHRIMATI MAJHIWAIN KO DINANK 1-7-96 SEY SEVA NIVVRITI KIYA JANA UCHIT HAI TATHA NATIONAL COAL WORKERS KI MANG KI UNHEY FIR SEVA MEY LIYA JAYA EVAM AAYU NIRDHARAN KEY LIYE APEX MEDICAL BOARD VEJA JANA UCHIT EVAM NAYASANGAT NAHI HAI?"

B. BISWAS, Presiding Officer

नई दिल्ली, 22 अप्रैल, 2004

का. आ. 1143.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टिस्को के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 123/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-04-2004 को प्राप्त हुआ था।

[सं. एल-20012/547/2000-आई.आर. (सी-1)]
एस.एस. गुप्ता, अवर सचिव

New Delhi, the 22nd April, 2004

S.O. 1143.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 123/ 2001) of the Central Government Industrial Tribunal/Labour Court II, Dhanbad now as shown in the annexure, in the Industrial Dispute between the employers in relation to the management of TISCO and their workman, which was received by the Central Government on 19-04-2004.

[No. L-20012/547/2000-IR (C-1)]
S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri B. Biswas, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act., 1947.

Reference No. 123 of 2001

PARTIES : Employers in relation to the management of TISCO. Ltd. and their workman.

APPEARANCES:

On behalf of the workman : Mr. S. Singh, Advocate.

On behalf of the employers : Mr. D. K. Verma, Advocate.

State : Jharkhand Industry : Coal.

Dated, Dhanbad, the 15th March, 2004

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1) (d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/547/2000(C-I), dated, the 29th March, 2001.

SCHEDULE

"Whether the action of the Management of M/s. TISCO Ltd. Jamadoba in not regularising Shri

Ramdeo Prasad temporary worker is justified? If not, to what relief is Ramdeo Singh entitled and from what date?"

2. The case of the concerned workman according to the written statement submitted by the sponsoring Union on his behalf in brief is as follows :—

The sponsoring Union submitted that the concerned workman got his appointment under the management at Jamadoba on 6-5-92 on the service strength of his father-in-law Sri Karoo as Miner and issued Identity card, medical card and also allotted C.M.P.F. number. They submitted that at the time of giving employment management kept him on temporary jobs against permanent vacancies and assured him to make him permanent as soon as he completes 190 days attendance in the underground jobs. They submitted that the concerned workman discharged his duty as miner in the underground to the best of his ability and also to the entire satisfaction of the management. They further submitted that during the year 1993 and 1994 he gave his attendance for 172 days and 227 days respectively and accordingly he demanded for his regularisation in the post of miner w.e.f. 1994 but the management did not pay any heed to his appeal. Accordingly he raised an industrial dispute through the sponsoring Union before the ALC(C) Dhanbad for conciliation which ultimately resulted reference to this Tribunal for adjudication.

Accordingly, the sponsoring Union on behalf of the concerned workman submitted prayer for passing award with direction to the management to regularise him as miner from 1994 with back wages and other consequential relief.

3. Management on the contrary after filing written statement-cum-rejoinder have denied all the claims and allegations which the sponsoring Union asserted in the written statement on behalf of the concerned workman. They submitted that they maintain employees dependent register in respect of the collieries and establishments to facilitate the workmen to get the names of their dependents enrolled after completion of 15 years of service for their employment against future vacancies. Relying on the names recorded in the employees dependent register they provide employment to such dependents in the event of existence of temporary vacancies for temporary duration according to requirement. They disclosed that those temporary workers do not have any right for permanent absorption and whenever permanent vacancies exist the selection is made for permanent absorption out of the temporary employees according to seniority, suitability after necessary medical examination and also on the basis of observance of their performance during temporary engagement. They further disclosed that no rule exists for regularisation of temporary workers on the basis of number of days attendance put by them in calendar year or on the basis of number of years of service put by them. There is also no settlement with the recognised Union or with any union for regularisation of temporary worker and the permanent workman aware fully are of the fact, that temporary engagement of their dependents, are with a view to offer them special privilege and no right existed for demanding permanent employment for them. They submitted that for better production modern technology has been introduced in the mines and for which requirement of manpower also has been reduced and as a result the manpower has become surplus to requirement and resulting decrease of job facility. To scope with such situation they submitted that they have been compelled to introduce V.R.S. to adjust the man power according to requirement and according to availability of vacancies. Accordingly, they submitted that the scope for permanent absorption of temporary workers got reduced and for which the demand raised by the temporary workers for their permanent absorption could not be conceded to under the present situation.

They submitted that the concerned workman was provided temporary employment for the first time with effect from 6-5-92 in the capacity of dependent son-in-law of Sri Karoo and he was provided employment as the when required against temporary vacancies created on account of leave, sickness, temporary requirement or additional requirement in the course of various mining operations carried on in the mines and for which he does not have any right to demand for his permanent absorption under any provision of law and for which his demand is liable to be rejected.

4. POINTS TO BE DECIDED

"Whether the action of the management of M/s. TISCO Ltd. Jamadoba in not regularising Shri Ramdeo Prasad temporary workers is justified? If not, to what relief is Ramdeo Singh entitled and from what date?"

5. FINDING WITH REASONS

Considering record it transpires that both the sponsoring Union as well as management in order to substantiate their respective claim have examined on witness each as WW-1 and MW-1. Considering the facts disclosed in the pleadings of both sides and also considering evidence of WW-1 and MW-1 I find no dispute to hold that the concerned workman got his employment as per dependents quota maintained by the management. The concerned workman got his employment on 6-5-1992 as miner under the management at Jamadoba on the service strength of his father-in-law Sri Karoo. It is the contention of the concerned workman that though the management initially employed him as temporary miner assured him to make permanent on putting his attendance of 190 days in the mine. He submitted that during the year

1993 and 1994 he put his attendance as miner in the mine for 172 days and 227 days respectively. He disclosed that in the year 1994 as he worked in the mines for 227 days as per assurance given by the management he submitted representation for his regularisation as miner but the management arbitrarily refused his claim.

On the contrary management denying the claim of the concerned workman submitted that there was no question of giving any assurance to him at all on the ground that in the capacity of dependent son-in-law of Sri Karoo he was provided employment as and which required basis against temporary vacancy created on account of leave, sick, temporary requirement or additional requirement in various mining operations carried on the mines. They disclosed that they maintain employees dependent register to facilitate the workman to get their dependents enrolled after completion of 15 years of service for their employment against future vacancies. They further disclosed that for temporary workers they maintain a panel of workers and they provide jobs temporarily out of temporary vacancies if arises from the list of temporary workers systematically so that all temporary workers get equal opportunity for they temporary employment. MW-1 during his evidence disclosed that the concerned workman is junior to many other temporary workers and when for want of permanent vacancy those senior temporary workers could not be provided with permanent job there was no question at all for this regularisation superseding his seniors. MW-1 during his evidence disclosed that due to introduction of modern technology in the mines for better production since 1992/93 scope for wide employment has been squeezed much and for which they have been compelled to launch V.R. Scheme amongst the workmen. WW-1 i.e. the concerned workman during his evidence admitted the fact of launching V.R. Scheme. Question of introduction of V.R. Scheme would not arise to shrink the employment strength if there was no surplus workmen. As such if this fact is taken into consideration there is scope to say that existence of permanent vacancy in the mine have been decreased. It is not the claim of the management that the temporary workers are not at all entitled to get their regularization any day. Their submission is that they prepare a list of temporary workers taking their names from the employees dependent register as per seniority and thereafter they provide temporary employment to them time to time against leave and sick vacancy of permanent workers and also if any other occasion so arises. Thereafter on the basis of performance of work as per seniority a panel is prepared and they consider regularisation of the temporary workers out of the said panel as per seniority as and when vacancy arises. Management in course of evidence relying on the seniority list of temporary workers submitted that the position of the concerned workman according to that list (Ext. M-4) is 780, Disclosing this fact learned Advocate for the management during hearing submitted that if the claim of the concerned workman for his regularisation is taken into consideration in that case huge number of temporary workers who are waiting for their regularisation will be deprived from their legitimate claim of absorption against permanent vacancy and if it is also happened not only serious miscarriage of justice will be done against them but also there will be serious resentment in the industry which may create serious impact in the production. Apart from this fact Learned Advocate for the management submitted that maintenance of employees dependents register for the benefit of the workmen will be totally infructuous. Learned Advocate further submited that it is not the case of the concerned workman that either he has been stopped or discharged from his work. He is still working under the management and accordingly question of his regularisation complying the provision of Section 25F in the instant case is not at all applicable. Learned Advocates admitted that after given temporary employment the concerned workman was provided with Identity Card. His C.M.P.F, record has been opened and he is getting other benefits also from the management but by virtue of getting such benefits he is not entitled to get his regularise action superseding all his seniors and also violating the service policy of the management which is maintained for the temporary workers.

6. Concerned workman during his evidence admitted the fact of his employment as per dependents quota. He also admitted that like him many workmen also have not their employment on temporary basis as per dependent quota. He also admitted that the management maintains a panel of temporary workers who have got their service on dependent's quota. He further admitted that his name also has been included in the said panel alongwith other. He again admitted that management not only provide jobs to the temporary workers whenever any leave and sick vacancy arises but also always provided employment to the temporary workers as per list systematically and rationally.

Therefore, if the evidence of the concerned workman is taken into consideration a clear picture will come out how jobs are provided to the temporary workers against leave and sick vacancy as per seniority systematically and rationally from the list of panel maintained for the temporary workers by the management. It has already been discussed above how the management regularise a temporary worker when any permanent vacancy arise. Accordingly learned Advocate for the management in course of hearing categorically denied the fact that at the time of employment management gave any assurance to the concerned workman for his absorption against permanent vacancy after completing 190 days of work in the underground mine. Concerned workman in his written statement specifically asserted that management assured him to absorb against permanent vacancy after performing his duties in the underground as miner for 190 days in a year. The

appointment letter of the concerned workman during evidence of MW-1 was marked as Ext. M-2. On careful consideration of this letter I have failed to find out anything relying on which credibility of the submission of the concerned workman could be found out.

In the circumstances onus absolutely rests on the concerned workman to establish his claim but I find no hesitation to say that the concerned workman has lamentably failed to substantiate his claim by adducing cogent evidence.

Considering all material facts on record it is clear that management for the benefit and welfare of the workmen introduced a scheme with a view to give opportunity to their dependents for employment. It is clear that through the said scheme management provided temporary employment to many dependents of the workmen. It is not the claim of the management that those temporary workers will never get the scope of their absorption against permanent vacancy. Their specific contention is that whenever any permanent vacancy arises the same is filled up from the panel as per seniority subject to fulfillment of eligibility criteria. It is seen that the name of the concerned workman also has been empanelled and his position stands at Sl. No. 780. Therefore, question of his regularisaion superseding his seniors definitely would be unbecoming and if it is so done by way of passing award it will be amounted not only to serious miscarriage of justice but also it will create a serious impact amongst the workmen who are senior to him and waiting for their regularisation. In view of the fact and circumstances discussed above I hold that the concerned workman is not entitled to get any relief. In the result, the following Award is rendered :

"The action of the management of M/s. TISCO Ltd. Jamadoba in not regularising Shri Ramdeo Prasad, Temporary worker is justified. Consequently, the concerned workman is not entitled to get any relief."

B. BISWAS, Presiding Officer

नई दिल्ली, 22 अप्रैल, 2004

का. आ. 1144.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा.को.को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 208/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-4-04 को प्राप्त हुआ था।

[सं. एल. 20012/539/98-आई.आर. (सी-1)],

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 22nd April, 2004

S.O. 1144.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.208/99) of the Central Government Industrial Tribunal/Labour Court II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCI and their workman, which was received by the Central Government on 19-4-04.

[No. L-20012/539/98-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

In the matter of a reference U/s 10(1)(d)(2A) of the I.D. Act.

Reference No. 208 of 1999

PARTIES : Employers in relation to the management of Kusunda Area of M/s. BCC Ltd.

AND

Their Workmen

PRESENT: Shri B. Biswas, Presiding Officer

APPEARANCES:

For the Employers : None

For the Workmen : None

State : Jharkhand Industry : Coal.

Dated, the 10th March, 2004

AWARD

By Order No. L-20012/539/98-(C-I) dated 'nil', the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"क्या बी०सी०सी०एल० कुसुन्डा क्षेत्र के प्रबन्धतंत्र द्वारा स्व: श्री सुदान भूइया के आश्रित को NCWA IV के पैरा 9.4.2 के अन्तर्गत नियुक्ति न देना उचित एवं न्यायसंगत है। यदि नहीं तो उक्त आश्रित किस राहत के पात्र हैं ? तथा किस तारीख से ?"

2. Neither the concerned workman nor his representative is found present. None appears for the management. It appears from the record that since 1999 the instant case is pending for filing written statement by the parties. Record shows that inspite of giving repeated chance the parties have failed to submit any written statement and killing time for dates together. As such at this stage I do not find any sufficient ground to adjourn this case further for filing written statement. Considering the conduct of the parties there is sufficient reason to believe that they are not interested to proceed with hearing of the case.

3. Accordingly, a 'No Dispute Award' is passed presuming non-existence of the dispute between the parties.

B. BISWAS, Presiding Officer

नई दिल्ली, 22 अप्रैल, 2004

का. आ. 1145.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा.को.को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 258/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-4-04 को प्राप्त हुआ था।

[सं. एल. 20012/467/98-आई.आर. (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 22nd April, 2004

S.O. 1145.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.258/99) of the Central Government Industrial Tribunal/Labour Court II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL, and their workman, which was received by the Central Government on 19-4-04.

[No. L-20012/467/98-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) DHANBAD

In the matter of a reference Under Sec. 10(1)(d)(2A) of the Industrial Disputes Act, 1947.

REFERENCE NO. 258 OF 1999.

PARTIES: Employers in relation to the management of Kustore Area of M/s. B. C.C. Ltd.

AND

Their Workmen

PRESENT: SHRI B.BISWAS, Presiding Officer

APPEARANCES:

For the Employers : Shri H. Nath, Advocate

For the Workman : Shri H. P. Gond, Advocate

State : Jharkhand Industry : Coal.

Dated, the 29th March, 2004

AWARD

By Order No. L-20012/467/98-IR (C-1) dated 4-6-1999 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the demand of the union for the employment of dependant of Smt. Talo Devi, Ex-W/L who died in 1984, when her dependant son was minor, is justified? If so, to what relief the dependant son of deceased is entitled to ?"

2. The case of the concerned petitioner according to the written statement submitted by him, in brief, is as follows :

The petitioner submitted that his mother, Talo Devi, was Wagon Loader at Rajapur O.C.P. under Kustore Area No. VIII under M/S. B.C.C. Ltd. He disclosed that his mother died on 26-3-84 as a result of road accident while she was going to her duty. At the time of the said accident and death of his mother, the concerned petitioner was dependant on her minor son. He submitted that after the death of his mother a representation to the management was submitted by him with a prayer for keeping reservation of his service for future as he was minor at that time. After attaining his majority being dependant son of his mother i.e. Talo Devi he submitted a representation to the management for providing him employment as per provision of NCWA-III and in support of his claim he submitted relevant papers but the management instead of considering his prayer refused to provide any employment to him. Accordingly, he raised an industrial dispute through the sponsoring union for conciliation which ultimately resulted reference to this Tribunal for adjudication.

3. The management, on the contrary, after filing written statement-cum-rejoinder have denied all the claims and allegations which the concerned petitioner asserted in his written statement. They submitted that they had no information about the death of Talo Devi due to road accident. They disclosed that they came to know about the death of Talo Devi in 1984 when a death certificate was produced. They disclosed that after lapse of ten years the concerned petitioner S/o Smt. Talo Devi, submitted his application for employment on 26-7-94 under Clause 9.4.2 of NCWA. They disclosed that such application of the petitioner was regretted by the management as it was belated one and in absence of any provision as per NCWA to consider the application of employment of the dependant of Ex-Badli/Casual workman of the company. They submitted that they did not commit any illegality or took any arbitrary decision violating the principle of natural justice in regretting the claim of the petitioner. Accordingly, the management submitted their prayer to pass award rejecting the claim of the concerned workman.

Points to be decided :

4. "Whether the demand of the union for the employment of dependant of Smt. Talo Devi, Ex-W/L who died in 1984, when her dependant son was minor, is justified? If so, to what relief the dependant son of deceased is entitled to?"

Finding with reasons :

5. It transpires from the record that the petitioner in order to substantiate his claim examined himself as WW-1 while the management also in support of their claim

examined one witness as MW-1. Considering the evidence of WW-1 and also considering the evidence of MW-1 I find no dispute to hold that Smt. Talo Devi, the mother of the present petitioner got her appointment as Badli Wagon Loader in Group-III at the basic of Rs. 16.36 per day with effect from 11-2-1982. Her letter of appointment during evidence of the concerned workman was marked as Ext. W-1 and W-1/1. The appointment was on probation for one year which according to terms of appointment letter might be extended at the discretion of the management subject to satisfaction performance report. As per Cl. 3 of the appointment letter service condition of Smt. Talo Devi was to be governed as per recommendations of Coal Wage Board for Coal Mining Industry and also by the Standing Orders of the Company. It is the specific contention of the workman that her mother met an accident on 26-3-84 while she was going to her duty and as a result of the said accident she succumbed to her injury on the same day. He disclosed that on the date of death of his mother he was minor and a boy of 10-12 years and was dependant on his mother. He disclosed that after the death of his mother he submitted a representation to the management for his service in future on attaining his majority on compassionate ground as per Clause 9.4.2 of NCWA. The management in para 5 of the written statement admitted that they come to know about the death of Smt. Talo Devi as Badli wagon Loader on receipt of her death certificate in the year 1984. It is the contention of the petitioner that he submitted representation to the management alongwith death certificate of his mother, Therefore, there is sufficient scope to believe that the management was well aware about the death of Smt. Talo Devi in the year 1984.

6. It is the contention of the concerned petitioner that after attaining majority he submitted representation to the manangement alongwith all papers on 26-7-94 with a prayer for his employment on compassionate ground as per Clause. 9.4.2 of NCWA. The said petition during his evidence was marked as Ext. W-4. It is the allegation of the petitioner that inspite of knowing all the facts the management refused to provide him any employment complying the provision as laid down in Clause 9.4.2 of NCWA. The regret letter during his evidence was marked as Ext. M-2. The management by this letter being No. BCC/KA/F/ROCP/SJ/'95/601 dated 8/15-6-95 informed the petitioner that no employment could be provided to him as there is no provision of the company to give employment under Clause 9.4.2 in case of casual employee. The management also intimated this fact to the United Coal Workers Union vide letter dated 16/29-12-94 (Ext. M-3/1) and also to A. L. C. (C) vide letter dated 15-9-88 (Ext. M-4) in response to Industrial Dispute raised by this sponsoring union. Therefore, according to submission of the management the candidature of the concerned workman could not be considered as per Clause 9.4.2 of NCWA as the mother of the concemed petitioner was not a permanent workman under the management. As per regret letter marked as Ext. M-2 there is sufficient scope to arrive to the conclusion that delay of submitting application for employment was not the ground for rejection of the prayer of the concerned petitioner. It is the specific contention of the management that provision of Clause 9.4.2 of NCWA is only applicable to permanent workers of the company. Clause 9.4.2 of NCWA provides employment to one dependant of the worker who dies while in service. This clause is absolutely silent, if the workman should be a permanent workman and in case of his death the eligibility of his dependant only crops up for consideration of employment by the management. According to Section 2(s) of the Industrial Disputes Act "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment by express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

As per Certified Standing Orders "Workmen" have been classified in six groups, namely, (a) Permanent, (b) Probationer, (c) Temporary, (d) Badli or substitute, (e) Casual, and (f) Apprentices. Smt. Talo Devi, mother of the concerned petitioner got her appointment as Badli Wagon Loader. Definition of Badli or Substitute has been given in Clause 7.5 of the Certified Standing Orders as is one who is employed in the post of a permanent workman or a probationer who is temporarily absent from duties, but he would cease to be badli on completion of a continuous period of service of one year (190 days attendances in the case of an undergorund workman and 240 days attendances in the case or any other workmen) in the same posts or other post or posts in the same category. According to appointment letter the concerned workman started working under the management as Badli Wagon Loader since 10-2-1982. Smt. Talo Devi, mother of

the concerned petitioner died on 26-3-84 as a result of road accident i.e. after completion of two years of service she died. As per appointment letter said Talo Devi was in probation for a period of one year subject to condition that such probation period may be extended at the discretion of the management (Ext. W-1/1). No incriminating material is forthcoming on the part of the management in course of hearing that probation period of Smt. Talo Devi as Badli Wagon Loader was extended after completion of one year of her service. Therefore, there is sufficient reason to consider that Talo Devi got confirmed after completion of her probation period of one year. Moreover, if Clause 7.5 of the Certified Standing Order is taken into consideration in that case to the status of Badli workman had been ceased after completion of 240 days attendance given by Talo Devi during the period in question. Therefore, if the condition laid down in the appointment letter (Ext. W-1/1) and if Clause 7.5 of the Certified Standing Order are taken into consideration there is sufficient scope to draw conclusion that status of Badli Wagon Loader of Talo Devi was ceased after completion of statutory period of service. Accordingly in absence of any cogent document on the part of the management I find no scope to draw any adverse inference against Smt. Talo Devi about change of status of her designation. The management regretted employment of the concerned petitioner (Ext. M-2) taking the plea that Smt. Talo Devi was a casual employee and for casual employee there was no provision to place claim by any dependant for his employment. Clause 7.6 of the Certified Standing Orders has clearly interpreted who is a casual workman. According to this clause a casual workman means a workman who has been employed for work which is intermittent or sporadic or of casual nature. The appointment letter of Talo Devi speaks clearly that she did not get her appointment initially as casual worker but as badli wagon loader. I have already discussed the status of Badli Wagon Loader and therefore there is no scope of all to equate the status of Badli Wagon Loader with that of the status of casual worker. Standing absolutely on wrong footing the management regretted to provide employment to the cocerned petitioner which I consider is unjust, improper and not in accordance with the principle of natural justice. When Talo Devi was not at all a casual worker the question of refusal by the management to provide employment would never arose as per Clause 9.4.2 of NCWA. Not only as per service condition given in the appointment letter but also if clause 7.5 of Certified Standing Order is taken into cosideration there is sufficient scope to say that the status of Talo Devi at the time of her death was not of the status of badli worker and to this effect I have discussed in detailed above. It is not the case of the management that they regretted employment to the concerned petitioner on the ground of delay on false representation. Therefore, there is no scope to discuss this aspect at all. No evidence is forthcoming on the part of the managernent that the petitioner was not minor and also was not dependant on her mother, Talo Devi when she died as a result of road accident. Accordingly the claim of the concerned petitioner cannot be ignored at all. It is the specific claim of the petitioner that he was only 10-12 years old when his mother died and after attaining his majority he submitted application for his employment on compassionate ground under Clause 9.4.2 of NCWA. Mine Act has clearly pointed out minimum age of employment of any workman in the mine. Therefore it was not possible for the concerned petitioner to submit application for employment when he was minor though he gave intimation to that effect. Therefore, I do not find any illegality in filing petition for employment by the concerned petitioner after attaining his majority. The said petition was considered by the management and rejected on the ground which is not at all acceptable in view of my discussion above. I, therefore, hold that the management illegally and arbitrarily without going into the merit of the claim as well as without considering service status of Smt. Talo Devi rejected the prayer on the plea which cannot be accepted at all.

7. In view of the facts and circumstances discussed above, I therefore hold that the concerned petitioner is entitled to get employment in view of his prayer.

8. In the result, the following award is rendered–

The demand of the union for employment of dependant of Smt. Talo Devi, Ex-W/L who died in 1984, when her dependant son was minor is justified. Accordingly, the management is directed to provide employment to the dependant son of late Talo Devi within two months from the date of publication of the award in the Gazette of India.

B. BISWAS, Presiding Officer

नई दिल्ली, 22 अप्रैल, 2004

का. आ. 1146.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 20/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-4-04 को प्राप्त हुआ था।

[सं. एल.-20012/507/95-आई.आर. (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 22nd April, 2004

S.O. 1146.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.20/97) of the Central Government Industrial Tribunal/Labour Court II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of CCL, and their workman, which was received by the Central Government on 19-4-04.

[No. L-20012/507/95-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

SHRI B. BISWAS, Presiding officer.

In the matter of an Industrial Dispute under section 10(1) (d) of the I.D Act. 1947.

Reference No. 20 of 1997.

PARTIES : Employers in relation to the management of Rajarappa Coal Washery of M/s. C.C.L and their workmen

APPEARANCES :

On behalf of the workman : Mr. K. Chakravorty, Advocate

On behalf of the employers : Mr. D. K. Verma Advocate

State : Jharkhand Industry : Coal.

Dated, Dhanbad, the 29th March, 2004

AWARD

The Govt. of India, Ministry of labour, in exercise of the powers conferred on them under Section 10(1) (d) of the I.D Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/507/95 IR (C-I), dated, the 4th February, 1997.

SCHEDULE

"Whether the demand of the Union that S/ Shri Ramesh Naik and 59 others (As listed in annexure) should be regularised under the management of Rajarappa Washery of M/s C.C. L is justified? if so, to what relief are these workmen entitled ?"

2. The case of the concerned workmen according to written statement submitted by the sponsoring Union on their behalf in brief is as follows.

The sponsoring Union submitted that the concerned workmen have been working as slurry cleaning mazdoor at Rajarappa Washery since 1990/1991 with unblemished record of service continuously and have put in more than 240 days attendance in each calendar year.

They submitted that the Govt. of India, Ministry of Labour prohibited engagement of Contract Labour in the slurry cleaning job in the month of Nov. 1990. They disclosed that these workmen have been engaged by the management in the slurry cleaning job after it is being declared as a prohibited category of job. They submitted that the concerned workmen not only have been working under direct control and supervision of the management but also all the implements for carrying out the said job have been supplied by them. They alleged that the concerned workmen though have been discharging their duties as slurry cleaners under direct control and supervision of the management they have been deprived of getting their minimum wages as per N.C.W.A on the contrary in the name of certain intermidiaries payment of wages is given to them far below the minimum rate of wages recommended by NCWA and for that purpose they are not maintaining any statutory records and documents. They alleged that the management have made perfect paper arrangement to conceal the fact with a view to deprive the concerned workmen of their legitimate wages and other rights.

Accordingly, they submitted representation to the management several times for regularisation of the concerned workmen and for wages as per N.C.W.A but to no effect. As a result seeing no other alternative they raised an Industrial dispute before ALC(C) Hazaribagh for conciliation which ultimately resulted reference to this tribunal for adjudication.

2. The sponsoring Union in view of the facts and circumstances stated in the written statement submitted prayer for passing award directing the management to regularise the concerned workmen as slurry cleaning mazdoor with retrospective effect along with arrears of wages and other consequential benefit.

3. Management on the contrary after filing written statement cum rejoinder have denied all the claims and allegations which the sponsoring Union asserted in their written statement submitted on behalf of the concerned workmen.

They categorically denied the fact about engagement of the concemed workmen by the management at any point of as slurry mazdoor Rajarappa Coal Washery. They submitted that the management being a Public Sector Undertaking is bound to follow constitutional provision in the matter of employment of workmen under its rule. In that connection notice is published for selection and recruitment of persons inviting applications from eligible candidate through employment exchanges. Thereafter, selection is made by the selection committee and on the basis of recommendation of the selection committee the workmen are recruited in the role of the company. They are issue appointment letters, identity cards and pay slips every month to enable them to draw wages from the company. they submitted that there is no other mode of recruitment of workmen in the company by any person who so ever he may be at his own discretion by adopting any arbitrary methods of employment.

They submitted further that there is well set methods of awarding contract to parties on various jobs required to be carried on at collieries. The parties are issued work order after accepting tenders of those parties as per the

laid down procedures. The contractor engaged by the management selects and recruits its own workmen and supervise their jobs. Exercise control over them, makes payment to them and for all intent and purposes such workmen of the contractors cannot demand for their regularisation under the management.

They submitted that Rajarappa Washery is encircled by boundary walls all around with security personnel at the gate and no outsider can enter into the premises. The washery has been so designed and so maintained that the removal of slurry is effected by mechanical means and the water flow is recirculated by special pumps filled in the circuit not to allow water flow outside the premises. They submitted that as removal of slurry is done by mechanical process there is no scope for engagement of manual labour on removal of slurry from the slurry ponds on regular basis and for which there is absolutely no force in contention of the sponsoring that the concerned workmen were engaged for removal of slurry from the slurry ponds. They submitted further that the concerned workmen failed to produce any paper relating to their employment under the management of Rajarappa Washery. They also have failed to produce any permit indicating that they were ever engaged at the slurry ponds inside the factory premises though contractor. They submitted that settled slurry in the ponds inside their premises are lifted mechanically and for which no manual labour is employed for such process.

They disclosed that at some stage or other there was breakdown in the system because of mechanical failure and electrical defects and the ponds inside the washery became full causing over flow of water to outside the factory and some slurry settled down outside the factory premises along the drain. For the purpose of removal of that slurry to make the drain clean, one contractor was engaged after accepting the tender of that party. It was purely a temporary drain cleaning job and cleaning the natural ponds created due to overflow of water. This job was one time job given to the contractor and the workmen of that contractor have already raised an industrial dispute claiming their regularisation under the management taking plea of having worked as contractors workers for removal and cleaning of slurry outside the factory premises. The aforesaid reference is pending for adjudication by Tribunal No.1 Dhanbad.

They alleged that the concerned persons are job seekers and have never worked on any contract job of permanent in nature or any prohibited category of job. Their claim is purely speculative and for which there was no cause of action to demand for regularisation of their services. Accordingly, the management submitted their prayer to pass award rejecting the claim of the sponsoring Union for regularistion of the services of the concerned workmen.

POINTS TO BE DECIDED

"Whether the demand of the Union that S/Shri Ramesh Naik and 59 others (As listed in annexure) should be regularised under the management of Rajarappa Washery of M/s. C.C.L. is justified ? If so, to what relief are these workmen entitled?"

4. It transpires from the record that the sponsoring Union in order to substantiate the claim of the concerned workmen examined one workman as WW-1 while management also in support of their claim also examined one witness as MW-1.

WW-1 who is one of the concerned workmen during his evidence disclosed that from 1991 to March, 1999 they worked at Rajarappa Washery slurry pond as slurry cleaning mazdoor continuously and during this period they gave their attendance for more than 240 days in each year. He disclosed that not only officers of the management used to supervise their work but all the implements for clearing slurry from the ponds also were to be supplied by them. He also claimed that they would receive wages directly from the management but not as per NCWA and for which when they raised their objection they were threatened to stop from work. This witness during his evidence produced copies of attendance sheet in relation to their work which were marked as Ext. W-1 and W-1/1. He disclosed that these attendance sheet though were prepared under the handwriting of the labour officer of Rajarappa Washery the said labour officer has already disconnected his attachment with the said washery and for which he has failed to disclosed his whereabouts.

This witness disclosed further that though the said washery was bounded by walls with gate for entry they used to be taken inside washery by the officials of the management and for which they would not require and paper or I.D card for their entry inside the washery with a view to perform their job of removing slurry from the ponds situated inside. It has also been specifically asserted by him that Mr. B. K Sharma and Sanjoy Kumar used to pay their wages from the counter of the management. He also denied the fact that workers only used to draw their wages. On the basis of pay slips issued to them by pay clerk and cashier.

On the contrary MW-1 during his evidence disclosed that as the washery at Rajarappa is bounded by walls on all side each worker of the washery is required to produce identity card in the gate for entry inside the washery complex where security guards are posted. The contractors workers are also allowed to enter inside the complex on the basis of gate pass issued to them MW-1 during his evidence relying on the diagram Ext. M-1 showed different types of work are carried on inside the washery complex. He also produced the order issued by Pollution Control Board which during his evidence was marked as Ext. M-2. This witness during his evidence submitted that as removal

of slurry from the ponds inside washery is done absolutely by way of mechnical process categorically denied the fact of engagement of the concerned workmen by the management for removal of slurry from the ponds inside the washery complex. However, he admitted relying on the facts disclosed in para-12 of the written statement submitted by the management that engagement of contractor for removal of slurry from drain was correct. This witness during his evidence also categorically denied the fact that the concerned workmen started working as slurry cleaning mazdoor inside washery complex in the year 1991 and they were stopped from work in the month of March, 1999.

Now considering the evidence of WW-1 and MW-1 and also considering the facts disclosed in the pleadings of both sides I find no dispute to hold that Rajarappa Coal Washery is surrounded by boundary walls on all side and entry inside the complex of that washery is strictly restricted. Workmen of the washery are allowed to enter therein only on production of their identity cards in the gate while contractor workers are allowed to enter on the basis of gate pass issued by the management.

The diagram marked as Ext. M-1 has exposed a clear picture of the washery and slurry ponds where slurry are collected.

It is the specific claim of WW-1 that being engaged by the management they served at Rajarappa Washery slurry pond situated inside the washery complex as slurry removing mazdoor from 1991 till March, 1999. It transpires from his evidence that they used to perform the job of removing slurry from those ponds under direct control & supervision of the officials of the management and in doing so the management used to supply implements. It is his further contention that they used to draw their wages though not according to N.C.W.A. from the office counter through two officials viz. B.K. Sharma and Ajoy Kumar. The sponsoring Union in course of hearing neither was able to disclose the designation of those two officials nor could be able to examine them in order to substantiate their claim. It is the specific claim of WW-1 that management have stopped them from work after March, 1999 as they placed demand for their regularisation in service and also to pay wages as per N.C.W.A. WW-1 also specifically asserted that during this period they put their attendance for more than 240 days in each calendar year. He alleged that management stopped them from work without giving any notice illegally and arbitrarily.

Management on the contrary specifically denied the fact about engagement of the concerned workmen as slurry removing mazdoor for removing slurry from the ponds situated inside the complex of the washery. It is their specific claim that removal of slurry from the ponds situated inside the complex is absolutely done by mechanical process and for which question of employing manpower never arose.

According to the submission of the sponsoring Union as well as according to the evidence of WW-1 it transpires that the concerned workmen worked under the managment for continuously along eight years but they have lamentably failed to produce their letter of appointments, identity card or any relevant papers to show that being employed by the management they started working there as slurry removing mazdoors, excepting the attendance sheet marked as Ext. 1 and W-1/1. It is the specific claim of the management that Rajarappa Washery complex is a public sector under taking and for which they are bound to follow constitutional provisions in the matter of employment of workmen as per rule framed thereunder and after selection not only appointment letter is issued but also I.D. card is also provided to him. Pay slip also is issued to each workman to draw wages. They submitted categorically that there is no other mode of recruitment of workman in the company by any person whosoever he is, at his own discretion by adopting any arbitrary mode of employment.

Apart from direct recruitment maintaining statutory procedure of the management in case of any exigency they appoint contractor to perform certain jobs of temporary nature as per work orders after accepting the tenders following appropriate procedure. To perform the said contractual job as per work order the contractor selects and recruits his own workmen and supervise their job exercising control over them and also pays wages to them. Accordingly, they submitted that the workmen engaged by the contractor are the workmen of the management and for which there is no scope at all to give relief like that of their regular workmen.

It has been already discussed above that WW-1 during his evidence specifically asserted that not only they were engaged by the management but also they used to receive wages also directly from them. It is also his specific claim that though they worked being engaged by the management they were never paid wages as per N.C.W.A. and for which when they raised their protest their work had been stopped by them. The evidence of WW-1 if looked into carefully will expose that neither they worked as workmen of the contractor nor they received any wages from that contractor for the service rendered by them. On the contrary if facts disclosed in para-7 of the written statement submitted by the sponsoring Union is taken into consideration, it will expose that without invoking the specific instruction given in N.C.W.A. the management used to pay wages to the concerned workmen below the rates through certain intermediaries and also without maintaining the statutory records. It is really curious to note that the sponsoring Union did not consider necessary to disclose the name of any of the intermediary

through whom the management used to pay wages to the concerned workmen below the rates of N.C.W.A. The concerned workman during his evidence on oath did not make any whisper at all that they even received wages from the management through intermediaries. Therefore, such claim of the sponsoring Union appears to be baseless and cannot be accepted at all. In course of evidence MW-1 the sponsoring Union relied on the facts which the management disclosed in para 12 of their written statement. In para 12 of the written statement management disclosed that at some stage or other there was breakdown in the system because of mechanical failure and electrical defects and the ponds inside the factory became full causing overflow of water to outside the factory and some slurry settled down outside the factory premises along the drain. For the purpose of removal of that slurry to make the drain clean, one contractor was engaged after proper negotiation and accepting the tender of that party, it was purely a temporary drain cleaning job and cleaning the natural ponds created due to the overflow of water. This job was one time job given to the contractor and the workmen of that contractor have already raised an industrial dispute claiming their regularisation under the management taking pleas is of having worked as contractor workers for removal and cleaning of slurry outside the Factory premises, the aforesaid reference is pending for adjudication before the Hon'ble Tribunal No. 1, Dhanbad.

Therefore, if the facts disclosed in the said para is taken into consideration it will expose clearly that work order for cleaning drain situated outside the factory was given to a contractor and over that issue the workmen who were engaged by the contractor raised an industrial dispute pending before Tribunal No. 1 for adjudication. Therefore subject matter of para 12 of the written statement cannot be taken into consideration in the instant case. In the instant case specific claim of the sponsoring Union is that the management engaged directly sixty concerned workmen as slurry cleaning mazdoor for removal of slurry from the tanks situated inside the complex of the washery in the year 1991. It is also specific claim of the sponsoring Union that from 1991 to March, 1999, the concerned workmen worked continuously under the management and put their attendance for more than 240 days in each year. In support of their claim they relied on the photo copies of atendance sheet marked as Ext. W-1 to W-1/1 prepared by the Labour Officer of Rajarappa Washery. WW-1 during his evidence failed to disclose the name of that Labour Officer who prepared these attendance sheet. There was no hindrance on the part of the sponsoring Union to examine that Labour Officer as witness in order to justify their claim. However, I have carefully considered the photo copy of the attendance sheet and on my careful consideration it revealed that one contractor "A sangathit Shramik Sahayog Samity R.W.P. in one occasion for the period from 1st to 30th March, 1991 engaged 219 workmen for removal of slurry from the settling ponds (outside) washery and stacking the same within radius of 30 metres and in another occasion for the period from 1st to 30th May, 1993 engaged 166 workmen for removal of sand and debris mixed with coal particles etc. from R.W.P. Therefore, it is clear in one occasion the contractor as alleged by the sponsoring union was engaged for removal of slurry from the ponds situated outside of the washery. The said work lasted for 30 days. Therefore, until and unless cogent document is produced there is no scope to say that beyond the period of 30 days the said work lasted continuously for years together till March, 1999. In the said list name of 219 workmen appears. In the instant case the claim has been placed by 60 workmen. Nowhere in the written statement the sopnsoring union disclosed that out of 219 workers sixty workmen have raised his disputes. It is the specific claim of the management that the slurry ponds are situated inside the complex of the washery which is surrrounded by boundary walls. They categorically denied the fact of existence of any ponds outside washery. WW-1 also in course of his evidence disclosed that they worked as slurry cleaning mazdoor for removal of slurry from the ponds situated inside the washery. Accordingly question of their engagement to work for removal of slurry from the ponds outside washery did not arise. As such relying on the photo copy of attendance sheet Ext. W-1/1 the claim which the sponsoring Union intended to raise finds no basis at all. The same view is followed in view of claim made by the sponsoring union relying on the photo copy of attendance sheet marked as Ext. W-1.

It is the specific claim of the sponsoring Union that the concerned workmen were directly engaged by the management for removal of slurry from the ponds situated inside the washery. WW-1 during his evidence fully corroborated this fact.

It is the claim of the sponsoring Union that inspite of rendering continuous service for years together the management neither paid their wages as per N.C.W.A. nor considered their regularisation. On the contrary they stopped the workmen from work illegally and arbitrarily without issuing any notice. Ld. Advocate for the concerned workmen during hearing in order to substantiate the claim of the sponsoring Union relied on certain decisions.

In course of hearing Ld. Advocate for the sponsoring Union referred to decisions reported in 1999 (2) LLN 612(SC), 1985 Supreme Court cases (L&S) 975, 1996-(II) 435 (SC), S.C.L.J. Vol.15 P. 112 (SC), SCLJ Vol. (VI) P. 3867 (SC), S.C.L.J. Vol. III SC-P. 1557, 1997 LLR 288 (SC) 1995 IICRL 194, 1987 Lab I.C. P. 619(SC), FLR-1990 (60) P-20 (SC) in suport of their claim.

5. In the decision reported in 1999 (2) LLN 612 in connection with Haryana State Electricity Board Their Lordships of the Hon'ble Apex Court in para 13 observed to the effect that "there is however, a total unanimity of judicial pronouncement to the effect that in the event, the

Contract Labour is employed in an establishment for seasonal workings, question of abolition would not arise but in the event of the same being a perennial in nature, that is to say, in the event of the engagement of labour force through intermediary which is otherwise in the ordinary course . :vents and involve continuity in the work, the legislature is candid enough to record its abolition since involvement of contractor may have its serious evil of labour exploitation and thus he ought to go out of scene bringing together the principal employer and the contract labourers rendering the employment as direct and resultantly a direct employees." In arriving into this conclusion Their Lordship referred to the decision of Air India Statutory Corporation *Vs.* United Labour Union 1993 (I) LLN 75.

6. Again the decision reported in 1985 Supreme Court cases (L & S) 975 in connection with Reserve Bank of India and others Their Lordships of the Hon'ble Apex Court observed that striking out the names of workmen from rolls amounts to retrenchment covered by Sec. 25F of the I.D. Act if it is found that the workmen actually worked for a continuous period of more than 240 days in a year including Sundays and other paid holidays.

7. In the decision reported in 1996 II-LLJ P. 435 (SC) in connection with the Employees State Insurance Corporation, Hyderabad *Vs.* M/s. Rajakamal Transport & Anr. Their Lordships of the Hon'ble Apex Court observed to the effect. "It is seen that the Insurance Court after elaborate consideration found as a fact, the appellants have the control over loading and unloading of the goods entrusted to appellants. The appellants regular business is transportation of goods entrusted to as carrier. When the goods are brought to the warehouse of the appellants, necessarily the appellants have to get the goods loaded or unloaded through the Hamalis and they control the activities of loading and unloading. It is true as found by the Insurance Court that instead of appellants directly paying the charges from their pocket, they collect as a part of the consideration for transportation of the goods from the customers any pay the amount to the Hamalis. The test of payment of salary or wages in the facts of this case is not relevant consideration. What is important is that they work in connection with the work of the establishment. The loading and unloading of the work is done at their directions and control." While in the decision reported in S.C.L.J. Vol. 15 P-112 (SC) in connection with the case of Hussainbhai, Calucuts *Vs.* The Alath Factory Thexhil, Ali, Union Kozhikode and others Their Lordships observed "The true test may with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers subsistance, skill and continued employment. If he for any reason chokes of the worker is virtually laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex-contract is of consequence, when on lifting the veil or looking at the conspectus of factors governing employment, discern the naked truth, though drapped in different perfect paper arrangement, that the real is the management not the intermediate contractor, Myriad devices, half hiddren unfold after fold of legal forum depending on the degree concealment needed, the type of industry, the local conditions and the like may be restored to when labour legislation castes welfare obligation on the real employer, based on Articles, 3839,42,43 and 43-A of the Constitution. The Court must be astute to avoid the mischief and achieve the purpose of the land and not to misled by the maya of legal appearance".

If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the present of dubious intermediaries or the make believe trapping of detachment from the management cannot snap the real life bond. The story may vary but the noference defins ingenuinity. The liability cannot be shaken off.

Again in the decision reported in LLJ Vol. II 1964 P-633 (SC) in D.C. Dewan Mohidaan Sahib and sons and another *Vs.* United Bidi Workers Union, Salem and another Their Lordships of the Hon'ble Apex Court observed to the effect "on a review of entire evidence in the instant case the Industrial Tribunal found that the system of bidi manufacture through the so called intermediaries (styled as contractors) was a mere camouflage devised by the bidi manufacture. The Industrial Tribunal also found that the so called contractors were indigent persons and served no particulars duties and discharged no special functions. Raw materials were furnished by the manufacturers to be manufactured into finished product by the workmen and the contractors had no other functions except to take the raw materials, to the workmen and gather the manufactured materials. It therefore, hold that so called contractors were not independent contractors and were mere employees or were functioning as branch managers of various factories, their remuneration being dependent upon the work turned out. Hence it held that the bidi rollers were the employees of the bidi manufacturers and not the socalled independent contractors. The writ petition preferred by the employer to get the award quashed was however allowed but in the Writ appeal preferred by the concerned workmen the conclusions of the Industrial Tribunal were upheld."

Further in the decision reported in 1997 LLR 288 (SC) arising out of Air India Statutory Corporation *Vs.* United Labour Union and other Their Lordships of the Hon'ble Apex Court observed "when the contract labour system is absolished by necessary implication, the principal employer is under obligation to absorb the contract labours. The linkage between the contractor and

the employee stood snapped and direct relationship stood restored between the principal employer and the contract labour as its employees. Considered from perspective all the workmen in the respective services working on contract labour are required to be absorbed in the establishment of the Principal employer."

In the decision reported in 1995 II CLR 194 (SC) in Parimal Ch. Laha and Ors. *Vs.* Life Insurance Corporation of India and Ors. Their Lordships of the Hon'ble Apex Court observed "that the canteen workers are in fact the employees of the respondent corporation and they are entitled to minimum of the salary paid to class IV employees of the Corporation"

In catering cleaners of South Eastern Railway *Vs.* Union of India reported in 1987 Lab I.C. 619 Their Lordships of the Hon'ble Apex Court observed that "on the facts and the report of the Parliamentary Committee of Petitions on the question of employing catering cleaners on contract labour system that the work of cleaning catering establishment and Pantry car is necessary and incidental to the Industry or business of the Southern Railway and so requirement (a) of Sec. 10(2) is satisfied, that it is of perennial nature and so requirement (b) is satisfied, that the work is done through regular workmen in most railways in the country and so requirement (c) is satisfied and that the work requires the employment of sufficient number of whole time workmen and so requirement (d) is also satisfied. Thus all the relevant factors mentioned in Sec. 10(2) appears to be satisfactorily accounted for. In addition is the factor of profitability of the catering establishment".

In Shankar Mukherjee & Others *Vs.* Union of India and others reported in FLR. 1990 (60) P. 20 (SC) Their Lordships of the Hon'ble Apex Court observed "it is surprising that more than forty years after the independent, the practice of employing labour through contractors by big companies including public sector companies is still being accepted as a normal feature of labour employment. There is no security of service to the workmen and their wages are far below than that of the regular workmen of the company. This Court in Standard Vacuum Refining Co. of India Ltd. *Vs.* its workmen (1) and catering cleaners of Southern Railway (2) has disapproved the system of contract labour holding it to be 'archaie', 'Primitive' and of 'painful nature'. The system, which is nothing but an improved version of bonded labour, is sought to be abolished by the Act. The Act is an important piece of social legislation for the welfare of labourers and has to be liberally construed".

Learned Advocate for the workmen in course of extending argument submitted that the alleged contractor was a camouflage one and it was the management who in disguise of the said camouflage contractor exploted the services of the workmen for years together. Learned Advocate submitted that the concerned workmen should be considered as regular workmen of the management and in support of this claim he relied on the decision reported in S.C.L.J. Vol. VI P. 3867 In the said decision arising of M/s. Basti Sugar Mills Ltd. and Ram Ujagar, Their Lordships of observed "it was with a view to remove the difficulty in the way of workmen employed by contractors that the definition of employer has been extended by sub-clause (iv) of Sec. 2(j)". The position thus is (a) that the respondents are workmen within the management of Sec. 2(z), being persons employed in the industry to do manual work for reward and (b) they were employed by a contractor with whom the appellant company had contracted in the course of conducting the industry for the executions by the said contractor of the work of removal of press mud which is ordinarily a part of the Industry. It follows, therefore, from Sec. 2 (z) read with sub-clause (iv) of Section 2(i) of the Act that they are workmen of the appellant company and the appellant company is their employer.

On the contrary learned Advocate relying on the decidsion of the Hon'ble Apex Court reported in 2001 Lab. I.C. 3656 submitted that there is also no scope for direct absorption of the concerned wormen considering them as regular employees even if it is held that they were camouflage contract labour. Their Lordships of the Hon'ble Apex Court observed in the decision referred to above that "Neither Section 10 of the Contract Labour (Regulation and Abolition) Act or any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under sub-sec. (i) of Section 10 prohibiting employment of contract labour, in any process, operation or other works in any establishment". Consequently the principlal employer cannot be required to order absorption of the contract labour working in the concerned establishment. Accordingly Their Lordships of the Hon'ble Court overruled the judgement of Air India's Case. Their Lordship in this judgement further observed that on issuance of prohibition notification under Sec.10(1) of the Contract Labour (Regulation and Abolition) Act prohibiting employment of contract labour or otherwise, in an industrial brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employes of the principal employer who shall be directed to regularise the services of the contract labour in the

concerned establishment subject to the condition as may be specified by it for that purpose in the light of para-6 of the judgement. Hon'ble Court in para-6 observed if the contract is found to be genuine and prohibition notification under Section 10(1) of the Contract Labour (Regulation and Abolition) Act in respect of the concerned establishment has been issued by the appropriate Govt. prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process operation or other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and if necessary by relaxing the condition as to maximum age appropriating taking into considerations the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualification.

Therefore, from the decision referred to above it is clear that when there is prohibitory order u/s.10(1) of the Contract Labour (Regulation and Abolition) Act and knowing fully aware of that order if the management engages contract labour thereby it will not confer any right to place claim for direct absorption of the contract labour in the organisation but if it is established that the contractor is a ruse/camouflage in that case the contract labours should be considered as employees of the management though in the matter of their absorption the guidelines given in para-6 should be followed.

I have carefully considered all the decisions referred to by the learned Advocate for the sponsoring Union as well as the management.

Considering the written statement submitted by the sponsoring union as well as considering evidence of WW-1 I find that the sponsoring union have taken two courses to get their relief. In the one occasion while they specifically claimed that the concerned workmen were directly engaged by the management, in other occasion they disclosed that inspite of their direct engagement the management used to pay wages to them below the rates of N.C.W.A. though certain intermediaries and the said intermediaries were nothing but camouflage. WW-1 during his evidence emphatically disclosed that they used to receive wages directly from the management. He did not make any whisper about receipt of their wages through intermediaries. Therefore, onus absolutely rest upon the sponsoring union to establish that indisguise of camouflage contractor the concerned workmen actually were engaged by the management. It is to be borne into mind that Rajarapa Coal Washing Plant is a public Sector undertaking. Accordingly the management cannot violating the specific rules relating to engagement of workers act arbitrarily. However, as onus rest on the sponsoring union they cannot avoid their responsibility to justify their claim. I have carefully considered all material facts on record and I find no hesitation to say in view of my discussion that they failed to adduce any sort of paper to substantiate their claim.

Excepting the attendace sheet for two months, one for the month of March, 1991 and the other for the month of May, 1993 the sponsoring union have failed to produce any such authentic document to show that being engaged by the management directly the concerned workmen worked continuously from 1991 from to March, 1999. They have also failed to produce a single scrap of paper to show that during this period in each year they put their attendance for more than 240 days. It is the specific claim of the sponsoring Union that without giving any notice management arbitrarily and illegally stopped the concemed workmen from service. In view of the decision reported in 2003 (96) FLR 492 Supreme Court Their Lordships observed that onus absolutely rests on the sponsoring Union to establish that the concerned workmen continuously worked for more than 240 days in each year before they were stopped by the management from work.

Excepting the attendance sheet Ext. W-1 and W-1/1 the sponsoring union have failed to produce a single scrap of paper to show that the concerned workmen worked under the management, continuously and put their attendance for more than 240 days in each year. I have discussed in details about the attendance sheet. These two attendance sheets in any circumstances do not signify the claim of the sponsoring Union about engagement of the concemed workmen by the management.

Therefore, after careful consideration of all the facts and circumstances discussed above I find no hesitation to say that the sponsoring Union have failed to substantiate their claim with all reasonable certainty that the concerned workmen being engaged by the management worked at Rajarappa Washery as slurry removing mazdoor for the period from 1991 to March, 1999 continuously and management illegally and arbitrarily stopped them from work inspite of giving their attendance for more than 240 days in each calendar year. Accordingly, the concerned workmen are not entitled to get any relief.

In the result, the following Award is rendered:—

"The demand of the Union that S/Shri Ramesh Naik and 59 others (As listed in annexure) should be regularised under the management of Rajrappa Washery of M/s. C.C.L is not justified. Consequently, the concerned workmen are not entitled to get any relief."

B. BISWAS, Presiding Officer.

ANNEXURE

List of Workmen for Order No. 1

Name	Father's Name
1. Sh. Ramesh Nayak	Sh. Chhamu Nayak
2. Sh. Shanker Prasad	Sh. Ganesh Mahato
3. Sh. Mani Uraco	Sh. Labu Ureco
4. Sh. Galeshwar Mahto (I)	Sh. Neemachand Mahto

	Name	Father's Name
5.	Sh. Panchanand Parjapati	Sh. Radha Kishan Parjapati
6.	Sh. Chhatu Mahto	Sh. Girdhari Mahto
7.	Smt. Sumitra Devi	Sh. Harkhu Mahto
8.	Sh. Chharen Singh	Sh. Mohar Singh
9.	Sh. Shibu Singh	Sh. Mohar Singh
10.	Sh. Dinesh Singh	Sh. Chakaldhar Singh
11.	Sh. Rahmet Ansari	Md. Anjan Ali
12.	Sh. Sudama Nayak	Sh. Mohan Nayak
13.	Sh. Illiyas Ansari	Md. Abdul-Aktar
14.	Md. Moinudidin	Md. Rahmatul Ansari
15.	Sh. Sainath Mahto	Sh. Viswanath Mahto
16.	Md. Habibullah	Md. Aisuddin Ansari
17.	Md. Dildar	Md. Nasuruddin
18.	Sh. Puraj Nath Mahto	Sh. Biga Mahto
19.	Sh. Rambrix Munda	Sh. Basu Munda
20.	Sh. Moin	Sh. Md. Yusuf Ansari
21.	Md. Natin Ansari	Md. Quasim Ansari
22.	Sh. Bisheshwar Mahto	Sh. Madhu Mahto
23.	Sh. Suresh Mahto IV	Sh. Dharmu Mahto
24.	Sh. Bhudheharan Munda	Sh. Darogin Munda
25.	Sh. Binod Manjhi	Sh. Saheb Manjhi
26.	Sh. Ramdash Manjhi	Sh. Badha Manjhi
27.	Sh. Mahesh Manjhi	Sh. Dhamu Manjhi
28.	Sh. Rabindra Kr. Manjhi	Sh. Mani Ram Manjhi
29.	Sh. Shiv Charan Prasad	Sh. Ganesh Mahto
30.	Sh. Ram Kishore Manjhi	Sh. Godhi Manjhi
31.	Sh. Ganpath Ram Nayak	Sh. Baldeo Nayak
32.	Sh. Dinesh Ram Nayak	Sh. Kishore Ram Nayak
33.	Sh. Babu Das Manjhi	Sh. Karma Manjhi
34.	Sh. Kanchan Singh	Sh. Luxmi Singh
35.	Sh. Ram Kishore Singh	Sh. Sidheshwar Singh
36.	Sh. Kunwar Rawat	Sh. Bishnu Rawat
37.	Sh. Binod Mahto	Sh. Inten Mahto
38.	Sh. Inochan Mahto	Sh. Balku Mahto
39.	Smt. Kaleshwari Devi	Sh. Mahesh Kewat
40.	Sh. Jaleshwar Mahto II	Sh. Shibu Mahto
41.	Sh. Vinay Kumar	Sh. Kishan Ram
42.	Smt. Sulkho Devi	Sh. Dashrath Kewat
43.	Sh. Bir Kewat	Sh. Nawal Kewat
44.	Smt. Pama Devi	Sh. Lalit Kewat
45.	Sh. Abu Kewat	Sh. Robnath Kewat
46.	Smt. Sugia Devi	Sh. Jainath Kewat
47.	Smt. Piaso Devi	Sh. Vagru Kewat
48.	Smt. Mina Devi	Sh. Gudra Kewat
49.	Sh. Somar Kewat	Sh. Roason Kewat
50.	Sh. Rathu Kewat	Sh. Lala Kewat
51.	Sh. Pachhu Kewat	Late Hirwa Kewat
52.	Sh. Pakan Kewat	Sh. Roasan Kewat
53.	Sh. Lakheshwar Mahto	Sh. Ghalnath Mahto
54.	Sh. Basana Kewat	Sh. Badri Kewat
55.	Sh. Bhuneshwar Kewat	Late Nandu Kewat
56.	Smt. Chwathia Devi	Sh. Gubra Kewat
57.	Md. Bobin Ahmad	Md. Md. Nadim
58.	Sh. Amrit Mahto	Sh. Mewle Mahto
59.	Md. Ajad	Md. Abdul Mazid

नई दिल्ली, 22अप्रैल, 2004

का. आ. 1147 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी० एम० पी० डी० आई० एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, II धनबाद के पंचाट (संदर्भ संख्या 212/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-4-2004 को प्राप्त हुआ था।

[सं. एल-20012/575/98-आई.आर. (सी-1)]

एस० एस० गुप्ता, अवर सचिव

New Delhi, the 22nd April, 2004

S.O. 1147 .—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 212/99) of the Central Government Industrial-Tribunal/Labour Court, II Dhandbad now as shown in the Annexure in the Industrial dispute between the employers in relation to the Management of C.M.P.D.I.L.and their workman, which was received by the Central Government on 19-04-2004.

[No. L-20012/575/98-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL No. 2, DHANBAD

In the matter of a reference under Sec. 10 (1)(d) (2A) of the Industrial Disputes Act, 1947

REFERENCE NO. 212 OF 1999

PARTIES: Employers in relation to the management of Central Mine Planning & Design Institute Ltd.

AND

Their Workmen

PRESENT : Shri B. Biswas, Presiding Officer.

APPEARANCES :

For the Employers : Shri A. K. Mishra
Personnel Officer

For the Workman/Union : None

State : Jharkhand. : Industry : Coal

Dated, the 16th March, 2004

AWARD

By Order No. L20012/575/98-IR(C-I) dated 17-5-1999 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal.

"क्या श्री महेन्द्र राम विधाई कैन्टीन के कर्मकार होने के नाते सी०एम० पी० डी०आई० एल०" के सीधे कर्मकार माने जाने चाहिए? यदि हां तो इस संबंध में क्या दिनांक 15-6-98 से ठेके के समाप्ति पर उनकी सेवाएं समाप्त किया जाना विधिवत एवं न्याय संगत है, यदि नहीं तो कर्मकार किस राहत के पात्र है?"

2. The case of the concerned workman according to the written statement submitted by him, in brief, is as follows:

He submitted that since 1978 the management is running a Canteen by appointing employer's Agent who is a camouflaged contractor without any legal or valid contract agreements. He submitted further that he was engaged as a Canteen boy in the said canteen and since 1987 he is working under the so-called contractor continuously but with uttar surprise the management dispensed with his service w.e.f. 15-6-98 without any notice and also without paying any compensation to him. He submitted that for long 12 years he diligently rendered his service continuously under the management. Accordingly such act of termination of his service was an unfair labour practice and gross violation of law as laid down by the Hon'ble Supreme Court without reasonable cause. Accordingly he raised an industrial dispute for conciliation which ultimately resulted reference to this Tribunal.

3. The management, on the contrary, after filing written statement-cum-rejoinder have denied all the claims and allegations which the concerned workman asserted in his written statement. They submitted that since December, 1987 the concerned workman was appointed in the canteen run by the contractor at CMPDIL premises. The concerned workman started working in the said canteen being appointed by the contractor. However the management terminated the contract of the said contractor who was engaged for running the canteen and for which the concerned workman was disallowed to perform his duty w.e.f. 15-6-98. Thereafter on 22-6-98 the concerned workman raised an industrial dispute directly to the A.L.C. (C), Ranchi against his verbal order of termination and prayed for reinstatement and regularisation. Thereafter the conciliation was called for and as such on 15-7-1998 the General Manager (P&A) draw the attention of A.L.C.-cum-Conciliation Officer replying to his letter dated 23-6-98 informing him that the dispute regarding the concerned workman has already been referred to by the Governmnet of India on 12-2-91 and has been registered as Reference No. 101/91 which was pending before this Tribunal. Again in the month of July, 1998 the union raised a separate dispute in respect of the concerned workman and 12 others. During the conciliation meeting held on 15-7-98 and 16-7-98 the management informed that the matter in dispute was sub-judiced in connection with Ref. No. 101/91 and accordingly submitted prayer for rejecting the claim of the union. However on 28-9-98 the A.L.C.(C), Ranchi without considering their prayer submitted his failure report to the Ministry about the individual dispute of the concerned workman and accordingly the present dispute was referred by the Ministry on 17-5-99. The Management submitted that as it was not a case of dismissal the concerned workman was debarred from raising dispute under Sec. 2-A of the Industrial Disputes Act and for which the instant reference case is liable to be rejected. They further submitted that as the concerned workman over his claim already raised an industrial dispute which has been registered as Reference No. 101/91 and the union who raised the dispute in 1998 for the concerned workman and 12 others which has already been rejected, the instant reference is not at all maintainable in the eye of law over the same-self issue. The management categorically denied the fact that the service of the concerned workman was terminated being an employee of the manangement. He was actually engaged by the contractor and the agreement between them and the said contractor was terminated, so the question of his working under the management in the said canteen did not arise and similarly the question of his dismissal from service by the management finds no basis at all. They submitted that the contractor was the principal employer of the concerned workman, but knowing fully well of the fact he did not raise any dispute before the A.L.C.(C) making the said contractor as party in the instant case and as such the case is not maintainable without impleading the principal employer as party. They further submitted that the management had no obligation to run a canteen in their premises. Actually for the benefit of the employees the management made a provision for a canteen and agreed to pay subsidy for running the said canteen. Accordingly there was no employer and employee relationship between

the management and the concerned workman. They submitted that they have their own recuritment policy and if a workman is required to be employed he is to be employed following the said policy. They further submitted that it was observed by the Apex Court that the canteens are of three categories, namely (a) Statutory Canteens, (b) Non-statutory recognized canteens, (c) Non-statutory and non-recognized canteens. The canteen which the contractor used to run in the premises of the management was non-statutory and non-recognized canteen as because there is neither any statutory provision nor any obligation upon them to run the said canteen. They submitted further that they have only a limited role to play functioning of contractor and do not have any cantrol whatsoever on the employee engaged by the contractor, in any manner. Their work used to be pervised and controlled by the contractor and not by the management, as the canteen was not operated by the management under their direct control and supervision. They submitted that in any manner the question of application of Section 10 of the Contract Labour (Regulation & Abolition) Act is attracted. They also categorically denied the fact that the contractor who used to operate the said canteen was a camouflage contractor for which they categorically denied the claim of the concerned workman and submitted prayer that the claim of the concerned is not justified and for which he is not entitled to get any relief.

3. Points to be decided :

"क्या श्री महेन्द्र राम विधाई कैन्टीन के कर्मकार होने के नाते सी. एम.पी.डी. आई. एल. के सीधे कर्मकार माने जाने चाहिए ? यदि हाँ तो इस संबंध में क्या दिनांक 15-6-98 से ठेके के समाप्ति पर उनकी सेवाएं समाप्त किया जाना विधिवत एवं न्यायसंगत है, यदि नहीं तो कर्मकार किस राहत के पात्र हैं ?"

4. Finding with reasons :

It transpires from the record that inspite of giving several opportunities the concerned workman has failed to adduce any evidence in order to substantiate his claim. The management also declined to adduce any evidence as the concerned workman on whom onus shifted to establish his claim has failed to adduce any evidence. It is the specific claim of the concerned workman that he started working under the contractor as a canteen-boy in the canteen situated in the premises of the management in the year 1987 and thereafter the management without giving him any notice or paying him any compensation dismissed him from his service in the year 1998. He submitted that such dismissal of his service by the management was illegal, arbitary and in violation to the principle of natural justice. The management did not deny the fact in their written stratement about the work of the concerned workman in the said canteen since 1987. Their contention is that the concerned workman was an employee of the contractor and the said contractor engaged him to work in the said canteen. They disclosed that in the year 1998 the contractual agreement to run the said canteen in between them and the said contractor was terminated and for which since that period the contractor was not allowed to work in the said canteen. In natural course as the concerned workman was an employee of the said contractor he was debarred from working in the said canteen. The management further submitted that they are not liable to run any canteen at theire premises, but for the benefits of the employees they made a provision for running a canteen and for that reason they reserved space to that effect. They further submitted that they agreed to pay subsidy to run the canteen in question. Actually they neither have control to run the canteen nor there was scope an their part to recruit any worker of the canteen violating their employment policy. They disclosed that the said canteen was non-statutory and non-recognised canteen and for which they do not have any liability of their canteen in question. Actually it was the contractor who not only was responsible for employing his men to work in the canteen but also was responsible to supervise their workman for smooth running of the same. Accordingly they submitted that the question of dismissal of the concerned workman from his service did not arise at all as he was not at all employed by them. Inspite of his fact the concerned workman in his individual capacity raised on industrial dispute which is a bar under Sec. 2-A of the Industrial Disputes Act. Considering submission of the management it is to be looked into whether the concerned workman was employed direcly by the management and thereafter he was discharged from his service by the management and other aspect which is to be looked into is whether the contractor who was engaged in running the canteen was a camouflage contractor or not. Inspite of getting ample opportunity the concerned workman did not consider necessary to adduce any cogent evidence to show that he was employed by the management and thereafter rendering his continuous service he was dismissed by them in the year 1998 without issuance of any notice or paying any compensation. The concerned workman also was liable to establish, particularly when he has brought the allegation against the management, that he contractor who used to run the said canteen was a camouflage contractor. Considering the pleadings of both sides I find no dispute to hold that the said canteen used to be run by a contractor as per agreement with the management. It is not the case of the concerned workman that he was employed by the management. On the contrary, it transpires clearly from the facts disclosed in his pleading that he was actually engaged as Canteen-boy by

the contractor. Therefore, it is to be established that the said contractor was a camoulfage contractor of the management. I have failed to find out an iota of evidence from the record relaying on which the submission made by the concerned workman could be supported. As the concerned workman has failed to establish that the said contractor was a camouflage contractor of the management the question of drawing any conclusion to the effect that he should be considered as the employee of the management does not arise. Accordingly the question of his dismissal from service by the management as raised by the concerned workman finds no basis to accept. The concerned workman did not consider necessary to raise industrial dispute against the contractor who engaged him in the canteen. Before the Conciliation Officer there was also scope on the part of the concerned workman to establish that though he was appointed by the contractor actually the said contractor was the man of the management and for which he should be considered as direct employee of the management. But the concerned workman did not consider necessary to highlight that fact before the Concilation Officer. It transpires from the facts disclosed in the written statement of the management that over the self-same issue the sponsoring union raised an industrial dispute before the Asstt. Labour Commissioner-cum-Conciliation Officer, Ranchi, for regularisation of the concerned workman and other workers as employees of the management. Ultimately as the said conciliation proceeding failed the Ministry made a reference which was registered as Reference No. 101/91 before this Tribunal. Apart from raising that dispute the sponsoring union again raised an individual dispute in the month of July, 1998 for the concerned workman and 12 others, but that too was rejected. It is seen that thereafter the concerned workman raised the instant industrial dispute for conciliation which ultimately resulted reference to this tribunal for adjudication. The concerned workman cannot avoid responsibility to establish that in individual capacity he was eligible to raise industrial dispute evading the provision of Sec. 2-A of the Industrial Dispute Act. Section 2(oo) has clearly pointed out under which circumstances a workman individually can raise an industrial dispute. Therefore, under the ambit of Sec. 2-A a workman is debarred from eraising any industrial dispute in independant capacity.

5. After careful consideration of all the facts and circumstances I find no dispute to hold that inspite of getting ample scope the concerned workman neither has been able to establish the fact that the contractor under whom he used to work in the canteen was a camouflag contractor nor he has been able to establish that he was directly apponted by the management to work in the said canteen. Functioning of canteen cannot be considered as of perennial in nature, particularly in respect of the canteens which are un-recognised and not statutory. The management categorically has submitted that they only made a provision for a canteen for the benefit of the employees and for that reason they provided a space and thereafter they as per Agreement engaged a contractor to run the said canteen and agreed to pay subsidy. They categorically submitted that neither they had any direct control over the said canteen nor they had any supervising capacity as the said canteen was not under their control or domain. Therefore, this aspect ought to have been established by the concerned workman to contradict the claim of the management, but it is seen that the concerned workman after raising the industrial dispute did not consider necessary to adduce any cogent evidence in this regard.

6. The facts disclosed in the pleadings in any circumstance cannot be considered as substantial piece of evidence until and unless the said fact is corroborated by cogent evidence. Here in the instant case the concerned workman got ample scope to justify his claim which he ventilated in the written statement, but he has failed to establish his claim lamentently. Accordingly, relaying on the facts disclosed in the written statement I find no scope to uphold the claim of the concerned workman and for which he is not entitled to get any relief.

7. In the result, the following award is rendered—

The demand of the concerned workman, Mahendra Ram, for his regularisation and reinstatement as Canteen-boy w.e.f. 15-6-1998 is not justified and the concerned workman is not entitled to any relief.

B. BISWAS, Presiding Officer

नई दिल्ली, 22अप्रैल, 2004

का. आ. 1148.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी० एम० पी० डी० आई० एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, II धनबाद के पंचाट (संदर्भ संख्या 214/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-4-2004 को प्राप्त हुआ था।

[सं. एल-20012/577/98-आई.आर. (सी-1)]

एस० एस० गुप्ता, अवर सचिव

New Delhi, the 22nd April, 2004

S.O. 1148 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 214/99) of the Central Government Industrial-

Tribunal/Labour Court, II Dhandbad now as shown in the Annexure, in the industrial dispute between the employers in relation to the Management of C.M.P.D.I.L. and their workman, which was received by the Central Government on 19-04-2004.

[No. L-20012/577/98-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL No. 2, DHANBAD

In the matter of a reference under Sec. 10 (1)(d) (2A) of the Industrial Disputes Act, 1947

REFERENCE NO. 214 OF 1999

PARTIES: Employers in relation to the management of C.M.P. D. I. Ltd

AND

Their Workmen.

PRESENT: Shri B. Biswas Presiding Officer.

APPEARANCES:

For the Employers : Shri A. K. Mishra Personnel Officer

For the Workman/Union : None

State : Jharkhand. : Industry : Coal

Dated, the 29th March, 2004

AWARD

By Order No. L20012/577/98-IR(C-I) dated 17-5-1999 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal.

"क्या श्री शत्रुध्न महतो विधाई कैन्टीन के कर्मकार होने के नाते सी०एम० पी० डी०आई० एल० के सीधे कर्मकार माने जाने चाहिए? यदि हां तो इस संबंध में क्या दिनांक 15-6-98 से ठेके के समाप्ति पर उनकी सेवाएं समाप्त किया जाना विधिवत एवं न्याय संगत है, यदि नहीं तो कर्मकार किस राहत के पात्र हैं ?"

2. The case of the concerned workman according to the written statement submitted by him, in brief, is as follows:

He submitted that since 1978 the management is running a Canteen by appointing employer's agent who is a comouflaged contractor without any legal or valid contract agreements. He submitted further that he was engaged as a Canteenboy in the said canteen and since 1987 he was working under the so-called contractor continuously but with uttar surprise the management dispensed with his service w.e.f. 15-6-98 without any notice and also without paying any compensation to him. He submitted that for long 12 years he diligently rendered his service continuously under the management. Accordingly such act of termination of his service was an unfair labour practice and gross violation of law as laid down by the Hon'ble Supreme Court without reasonable cause. Accordingly he raised an industrial dispute for conciliation which ultimately resulted reference to this Tribunal.

3. The mangament, on the contrary after filing written statement cum rejoinder have denied all the claims and allegations which the concerned workman asserted in his written statement. They submitted that since December, 1987 the concerned workman was appointed in the canteen run by the contractor at CMPDIL premises. The concerned workman started working in the said canteen being appointed by the contractor. However the management terminated the contract of the said contractor who was engaged for running the canteen and for which the concerned workman was disallowed to perform his duty w.e.f. 15-6-98. Thereafter on 22-6-98 the concerned workman raised an industrial dispute directly to the A.L.C. (C), Ranchi against his verbal order of termination and prayed for reinstatement and regularisation. Thereafter the conciliation was called for and as such on 15-7-1998 the General Manager (P&A) drew the attention of A.L.C-cum-Conciliation Officer replying to his letter dated 23-6-98 informing him that the dispute regarding the concerned workman has already been referred to by the Government of India on 12-2-91 and has been registered as Reference No. 101/91 which was pending before this Tribunel. Again in the month of July, 1998 the union raised a separate dispute in respect of the concerned workman and 12 others. During the conciliation meeting held on 15-7-98 and 16-7-98 the management informed that the matter in dispute was sub-judiced in connection with Ref. No. 101of 1991 and accordinghly submitted prayer for rejecting the claim of the union. However, on 28-9-1998 the A.L.C. (C), Ranchi without considering their prayer submitted his failure report to the Ministry about the individual dispute of the concerned workman and accordingly the present dispute was referred by the Ministry on 17-5-99. The management submitted that as it was not a case of dismissal the concerned workman was debarred from raising dispute under Sec. 2-A of the Industrial Disputes Act and for which the instant reference case is liable to be rejected. They further submitted that as the concerned workman over his claim already raised an industrial dispute which has been registered as Reference No. 101/91 and the union who raised the dispute in 1998 for the concerned workman and 12 others which has already been rejected, the instant reference is not at all maintainable in the eye of law over the same-self issue. The management categorically denied the fact that the service of the concerned workman was terminated being an employee of

the manangement. He was actually engaged by the contractor and the agreement between them and the said contractor was terminated, so the question of his working under the management in the said canteen did not arise and similarly the question of his dismissal from service by the management finds no basis at all. They submitted that the contractor was the principal employer of the concerned workman, but knowing fully well of the fact he did not raise any dispute before the A.L.C.(C) making the said contractor as party in the instant case and as such the case is not maintainable without impleading the principal employer as party. They further submitted that the management had no obligation to run a canteen in their permises. Actually for the benefit of the employees the management made a provision for a canteen and agreed to pay subsidy for running the said canteen. Accordingly there was no employer and employee relationship between the management and the concerned workman. They submitted that they have their own recuritment policy and if a workman is required to be employed he is to be employed following the said policy. They further submitted that it was observed by the Apex Court that the canteens are of three categories, namely (a) Statutory Canteens, (b) Non-statutory recognized canteens, (c) Non-statutory and non-recognized canteens. the canteen which the contractor used to run in the premises of the management was non-statutory and non-recognized canteen as because there is neither any statutory provision nor any obligation upon them to run the said canteen. They submitted further that they have only a limited role to play functioning of contractor and do not have any cantrol whatsoever on the employee engaged by the contractor, in any manner. Their work used to be supervised and controlled by the contractor and not by the management, as the canteen was not operated by the management under their direct control and supervision. They submitted that in any manner the question of application of Section 10 of the Contract Labour (Regulation & Abolition) Act is attracted. They also categorically denied the fact that the contractor who used to operate the said canteen was a camouflage contractor for which they categorically denied the claim of the concerned workman and submitted prayer that the claim of the concerned is no justified and for which he is not entitled to get any relief.

Points to be decided :

3. "क्या श्री शत्रुध्न महतो विधाई कैन्टीन के कर्मकार होने के नाते सी. एम.पी.डी. आई. एल. के सीधे कर्मकार माने जाने चाहिए ? यदि हाँ तो इस संबंध में क्या दिनांक 15-6-98 से ठेके के समाप्ति पर उनकी सेवाएं समाप्त किया जाना विधिवत एवं न्यायसंगत है, यदि नहीं तो कर्मकार किस राहत के पात्र हैं ?"

Finding with reasons :

4. It transpires from the record that inspite of giving several opportunities the concerned workman has filed to adduse any evidence in order to substantiate his claim. The management also declined to adduce any evidence as the concerned workman on whom onus shifted to establish his claim has failed to adduce any evidence. It is the specific claim of the concerned workman that he started working under the contractor as canteen-boy in the canteen situted in the premises of the management in the year 1987 and thereafter the management without giving him any notice or paying him any compensation dismissed him from his service in the year 1998. He submitted that such dismissal of his service by the management was illegal, arbitary and in violation to the principle of natural justice. The management did not deny the fact in their written stratement about the work of the concerned workman in the said canteen since 1987. Their contention is that the concerned workman was an employee of the contractor and the said contractor engaged him to work in the said canteen. They disclosed that in the year 1998 the contractual agreement to run the said canteen in between them and the said contractor was terminated and for which since that period the contractor was not allowed to work in the said canteen. In natural course as the concerned workman was an employee of the said contractor he was debarred from working in the said canteen. The Management further submitted that they are not liable to run any canteen at theire premises, but for the benefits of the employees they made a provision for running a canteen and for that reason they reserved space to that effect. The further submitted that they agreed to pay subsidy to run the canteen in question. Actually they neither have any control to run the canteen nor there was scope on their part to recruit any worker of the canteen violating their employment policy. They disclosed that the said canteen was non-statutory and non-recognised canteen and for which they do not have any liablity of their canteen in question. Actually it was the contractor who not only was responsible for employing his men to work in the canteen but also was responsible to supervise their workman for smooth running of the same. Accordingly they submitted that the question of dismissal of the concerned workman from his service did not arise at all as he was not at all employed by them. Inspite of this fact the concerned workman in his individual capacity raised an industrial dispute which is a bar under Sec. 2-A of the Industrial Disputes Act. Considering submission of the management it is to be looked into whether the concerned workman was employed direcly by the management and thereafter he was discharged from his service by the management and other aspect which is

to be looked into is whether the contractor who was engaged in running the canteen was a camouflage contractor or not. Inspite of getting ample opportunity the concerned workman did not consider necessary to adduce any cogent evidence to show that he was employed by the management and thereafter rendering his continuous service he was dismissed by them in the year 1998 without issuance of any notice or paying any compensation. The concerned workman also was liable to establish, particularly when he has brought the allegation against the management, that the contractor who used to run the said canteen was a camouflage contractor. Considering the pleadings of both sides I find no dispute to hold that the said canteen used to be run by a contractor as per agreement with the management. It is not the case of the concerned workman that he was employed by the management. On the contrary, it transpires clearly from the fact disclosed in his pleading that he was actually engaged as Canteen-boy by the contractor. Therefore, it is to be established that the said contractor was a camouflage contractor of the management. I have failed to find out an iota of evidence from the record relaying on which the submission made by the concerned workman could be supported. As the concerned workman has failed to establish that the said contractor was a camouflage contractor of the management the question of drawing any conclusion to the effect that he should be considered as the employee of the management does not arise. Accordingly the question of his dismissal from service by the management as raised by the concerned workman finds no basis to accept. The concerned workman did not consider necessary to raise industrial dispute against the contractor who engaged him in the canteen. Before the Conciliation Officer there was also scope on the part of the concerned workman to establish that though he was appointed by the contractor actually the said contractor was the man of the management and for which he should be considered as direct employee of the management. But the concerned workman did not consider necessary to highlight that fact before the Concilation Officer. It transpires from the facts disclosed in the written statement of the management that over the self-same issue the sponsoring union raised an industrial dispute before the Asstt. Labour Commissioner-cum-Concilation Officer, Ranchi, for regularisation of the concerned workman and other workers as employees of the management. Ultimately as the said conciliation proceeding failed the Ministry made a reference which was registered as Reference No. 101/91 before this Tribunal. Apart from raising that dispute the sponsoring union again raised an individual dispute in the month of July, 1998 for the concerned workman and 12 others, but that too was rejected. It is seen that thereafter the concerned workman raised the instant industrial dispute for concilation which ultimately resulted reference to this tribunal for adjudication. The concerned workman cannot avoid responsibility to establish that in individual capacity he was eligible to raise industrial dispute evading the provision of Sec. 2-A of the Industrial Dispute Act. Section 2(oo) has clearly pointed out under which circumstances a workman individually can raise an industrial dispute. Therefore, under the ambit of Sec. 2-A a workman is debarred from raising any industrial dispute in independent capacity.

5. After careful consideration of all the facts and circumstances I find no dispute to hold that inspite of getting ample scope the concerned workman neither has been able to establish the fact that the contractor under whom he used to work in the canteen was a camouflage contractor nor he has been able to establish that he was directly appointed by the management to work in the said canteen. Functioning of canteen cannot be considered as of perennial in nature, particularly in respect of the canteens which are un-recognised and not statutory. The management categorically has submitted that they only made a provision for a canteen for the benefit of the employees and for that reason they provided a space and thereafter they as per Agreement engaged a contractor to run the said canteen and agreed to pay subsidy. They categorically submitted that neither they had any direct control over the said canteen nor they had any supervising capacity as the said canteen was not under their control or domain. Therefore, this aspect ought to have been established by the concerned workman to contradict the claim of the management, but it is seen that the concerned workman after raising the industrial dispute did not consider necessary to adduce any cogent evidence in this regard.

6. The facts disclosed in the pleadings in any circumstances cannot be considered as substantial piece of evidence until and unless the said fact is corroborated by cogent evidence. Here in the instant case the concerned workman got ample scope to justify his claim which he ventilated in the written statement, but he has failed to establish his claim lamentently. Accordingly, relaying on the facts disclosed in the written statement I find no scope to uphold the claim of the concerned workman and for which he is not entitled to get any relief.

7. In the result, the following award is rendered—

The demand of the concerned workman, Satrughan Mahato, for his regularisation and reinstatement as Canteen boy w.e.f. 15-6-1998 is not justified and the concerned workman is not entitled to any relief.

B. BISWAS, Presiding Officer

नई दिल्ली, 22अप्रैल, 2004

का. आ. 1149 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा० को० को० लि० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, II धनबाद के पंचाट (संदर्भ संख्या 115/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-4-2004 को प्राप्त हुआ था।

[सं. एल-20012/102/96-आई.आर. (सी-1)]

एस० एस० गुप्ता, अवर सचिव

New Delhi, the 22nd April, 2004

S.O. 1149 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 115/97) of the Central Government Industrial Tribunal/Labour Court, II Dhandbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of B.C.C.L. and their workmen, which was received by the Central Government on 19-4-2004.

[No. L-20012/102/96-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 2, DHANBAD

In the matter of a reference under Sec. 10 (1)(d) (2A) of the Industrial Disputes Act, 1947

REFERENCE NO. 115 OF 1997

PARTIES : Employers in relation to the management of Bhowra OCP of M/S. BCCL.

AND

Their Workmen.

PRESENT : Shri B. Biswas, Presiding Officer.

APPEARANCES :

For the Employers : Shri B.M. Prasad, Advocate.

For the Workman : Shri S.N. Goswami, Advocate

State : Jharkhand : Industry : Coal

Dated, the 29th March, 2004

AWARD

By Order No. L-20012/102/96-IR(C-1) dated 22-10-1992 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Bhowra OCP of M/S. BCCL in denying to re-assess the age of the workman Smt. Kamla Mahali by Apex Medical Board is justified? If not, to what relief is the concerned workman entitled?"

2. The case of the concerned workman according to the written statement submitted by the sponsoring union on her behalf, in brief is as follows :—

The sponsoring union submitted that Smt. Kamla Mahali, concerned workman was originally appointed at Bhowra (North) Colliery on 8-10-1973 at No.4 siding having I.D. Card No.00175, Form 'B' Register No.4694 and C.M.P.F. A/C No. C/26/664 as wagon loader. They disclosed that at the time of appointment the date of birth of the concerned workman was recorded in the Form 'B' Register as 1-1-1942. The concerned workman thereafter was transferred from Bhowra (S) Colliery to Bhowra (N) O.C.P. They disclosed that in the year 1987 the management issued service excerpt to the concerned workman alongwith other workmen where in also her date of birth was recorded as 1-1-42. They alleged that by Office Order No. PS/BH/OCP/94/Rett/9608 dated 12-6-94/6-8-94 issued a notice to the concerned workman to retire from the service w.e.f. 1-1-95. On receipt of the said notice the concerned workman was astonished as because when her date of birth was recorded as 1-1-42 in Form 'B' register and also in service excerpt how the management asked her to be superannuated from service w.e.f. 1-1-95. Accordingly, she submitted representation to the management for rectification of her date of birth but to no effect. On the contrary, in view of that notice the management superannuated her w.e.f. 1-1-95. They further submitted that in accordance with the provision of JBCCI Implementation Instruction No.76 the age is to be assessed by Apex Medical Board, if there is variation in respect of age recorded in different records. Accordingly the concerned workman submitted prayer for assessment of her age through Apex Medical Board which was ignored by the management. They alleged that the management illegally and arbitrarily superannuated the concerned workman from her service before the actual date of her superannuation and for which they raised an industrial dispute before the A.L.C. (C) for conciliation which resulted reference to this Tribunal for adjudication.

3. The management, on the contrary, after filing written statement-cum-rejoinder have denied all the claim and allegations which the sponsring union asserted in the written statement. They submitted that at the time of entry of the concerned workman in service her date of birth was recorded in Form 'B' Register as 1-1-35. It has been mentioned further that in the service excerpt the date of birth was wrongly recorded as 1-1-42 and it was detected and properly corrected. As the date of birth of the concerned workman was 1-1-35 the management issued due notice to the concerned workman for her superannuation on attaining the age of 60 years w.e.f. 1-1-1995. Accordingly, they disclosed that the claim of the concerned workman to the effect that her date of birth was 1-1-42 and she was illegally superannuated, finds no basis at all.

In the circumstances the management submitted their prayer to pass award rejecting the claim of the concerned workman.

Points to be decided :

4. "Whether the action of the management of Bhowra OCP of M/s. BCCL in denying to re-assess the age of the workman Smt. Kamla Mahali by Apex Medical Board is justified? If not, to what relief is the concerned workman entitled?"

Finding with reasons :

5. It transpires from the record that the sponsoring union in order to substantiate their claim examined two witnesses including the concerned workman. The management, on the contrary, examined one witness in support of their claim.

Considering the evidence of both sides and also considering the facts disclosed in the pleadings I find no dispute to hold that the concerned workman got her appointment as wagon loader in the year 1973 at Bhowra (E) colliery and thereafter he was transferred to Bhowra (N) OCP. It is the contention of WW-1 i.e. the concerned workman that at the time of her entry in service the management recorded her age as 25 years. She disclosed that she received service excerpt from the management and returned back the same duly filled in the under her LTI. She disclosed that she made a representation to the management for rectification of her date of birth. During cross-examination this witness admitted that she was not at all aware if any industrial dispute was raised either before the A.L.C. (C) or she raised industrial dispute only one month before the date of her superannuation. This witness further admitted that in Form 'B' Register she put her L.T.I. while her service particulars including her age were recorded. She further admitted that in the Identity Card Register not only her photograph was pasted but L.T.I. was taken. WW-2 who is Joint Area Secretary of Bihar Colliery Kamgar Union, during his evidence disclosed that the date of birth of the concerned workman in Form 'B' Register was recorded as 1-1-42. In support, this witness relied on photo copy of Identity Card, marked Ext. W-1, copy of office order dated 20-9-86, marked Ext. W-2, service excerpt makred Ext. W-3, office order in the matter of issuance of superannuation notice, marked Ext. W-4 and representation submitted before the A.L.C. (C) raising industrial dispute, marked Ext. W-5. WW-2 further submitted that the concerned workman submitted representation to the management for rectification of her date of birth and the said two copies of representations during his evidence were marked as Exts. W-6 and W-7. On the contrary, MW-1 during his evidence produced original Form 'B' Register and Identity Card Register. In the original Form 'B' Register the name of the concerned workman appears at Sl. No. 4649 which during his evidence was marked Ext. M-1. In the said serial number along with all particulars of the concerned workman her date of birth was also recorded as 1-1-35. In the Identity Card Register the date of birth was also recorded as 1-1-35. This witness further disclosed being satisfied with the particulars recorded in the Form 'B' Register at Sl. No. 4649 the concerned workman put her LTI in the respective column. I find corroboration of this fact from the evidence of WW-1. I have carefully considered the Form 'B' Register and Identity Card Register and I am satisfied the date of birth of the concerned workman has been distinctly recorded in these two registers as 1-1-35. The sponsoring union in support of their claim relied on photo copy of the Identity Card Register which speaks that the date of birth therein was recorded as 1-1-42. His Identity Card Sl. No. was 175. Considering the original Identity Card Register, I am satisfied that the name of the concerned workman was recorded in Sl. No. 175. In the Identity Card Register when the date of birth of the concerned workman was recorded as 1-1-35. I have failed to understand how her date of birth in the copy of the Identity Card was recorded as 1-1-42. It is the specific allegation of the management that the date of birth in the copy of the Identity Card Register was interpolated by the sponsoring union with a view to give relief to the concerned workman. There is no allegation on the part of the sponsoring union that the date of birth recorded in the original Identity Card Register was interpolated. It is seen that the date of birth of the concerned workman in the Form 'B' Register was well as in Identity Card Register is appearing to be same. Therefore, onus absolutely rests on the sponsoring union to establish that the date of birth of the concerned workman was 1-1-42 and wrong date of birth was recorded in original Form 'B' Register and Identity Card Register. WW-1 during his evidence disclosed that at the time of her entry in service her date of birth was recorded as 25 years. I do not find any cogent document which may corroborate such claim and for which there is no scope to accept such contention. It is fact that in the service excerpt issued to the concerned workman the date of birth was recorded as 1-1-42. The management admitted in the written statement that due to mistake the said date of birth was recorded and the moment the said mistake was detected the same was removed after consulting Form 'B' Register as well as Identity Card Register. The date of birth and other particulars in the service excerpt are recorded on the basis of particulars recorded in the Form 'B' Register. Therefore, in the basis of this register it is clear that the date of birth in the service excerpt was wrongly recorded as 1-1-42 instead of 1-1-35. It is the claim of the sponsoring union that when there was discrepancy in recording date of birth of the concerned workman in different registers of the management it was their bounden duty to send the concerned workman before the Apex Medical Board for assessment of her age complying the provision as laid down in JBCCI Circular No. 76. In rebuttal such claim of the sponsoring union, the learned Advocate of the management submitted that there

was no discrepancy in recording the date of birth of the concerned workman in different registers maintained by the management. He submitted that Form 'B' Register is considered as statutory Register and binding upon all the parties. In the Form 'B' Register the date of birth of the concerned workman was recorded as 1-1-35. In the Identity Card Register the same date of birth was recorded. Therefore, the question of recording different date of birth in different registers in respect of the concerned workman did not arise at all. I fully agree with the submission of the learned Advocate of the management because of the fact that the concerned workman being fully satisfied with the entries recorded in Form 'B' Register put her LTI. In the Identity Card Register not only her photograph was pasted but also the concerned workman put her LTI in the same. Both the registers exposed clearly that the date of birth of the concerned workman was recorded as 1-1-35 and not 1-1-42. In the circumstances onus was on the sponsoring union to adduce cogent evidence to rebut the claim of the management relating to date of birth recorded in Form 'B' Register as well as Identity Card Register. I find no hesitation to say that the sponsoring union failed to produce an iota of evidence in support of their claim.

6. Accordingly, after careful consideration of all the facts and circumstances discussed above I find sufficient reason to believe that rightly the concerned workman was superannuated from her service w.e.f. 1-1-95 and for which there is no scope to say that the management approved that decision arbitrarily, illegally and violating the principle of natural justice. In the circumstances the concerned workman is not entitled to get any relief.

7. In the result, the following award is rendered— The action of the management of Bhowra OCP of BCCL in denying to re-assess the age of the workman Smt. Kamla Mahali by Apex Medical Board is justified and hence the concerned workman is not entitled to get any relief.

B. BISWAS, Presiding Officer

नई दिल्ली, 22अप्रैल, 2004

का. आ. 1150 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा० को० को० लि० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, II धनबाद के पंचाट (संदर्भ संख्या 41/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-4-2004 को प्राप्त हुआ था।

[सं. एल-20012/751/97-आई.आर. (सी-1)]

एस० एस० गुप्ता, अवर सचिव

New Delhi, the 22nd April, 2004

S.O. 1150.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/99) of the Central Government Industrial-Tribunal/Labour Court, II Dhanbad now as shown in the Annexure, in the industrial dispute between the employers in relation to the Management of B.C.C.L. and their workman, which was received by the Central Government on 19-04-2004.

[No. L-20012/751/97-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 2, AT DHANBAD

PRESENT : Shri B. Biswas, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947.

REFERENCE NO. 41 OF 1999

PARTIES :

Employers in relation to the management of M/s. B.C.C.L. and their workman.

Appearances :

On behalf of the workman : None

On behalf of the employers : Mr. H. Nath, Advocate

State : Jharkhand. Industry : Coal

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/751/97-IR(C-I), dated, the 18th January, 1999.

SCHEDULE

"Whether the action of the management of Angarpathra Colliery of M/s. BCCL in dismissing Shri Shankar Vishwakarma, Ex-M/Loader w.e.f. 6/10-4-95 from the services of the company on the ground of unauthorised absence w.e.f. 27-10-94 is legal and justified? If not, to what relief the workman is entitled?"

2. The case of the concerned workman according to the written statement submitted by the sponsoring Union on his behalf in brief is as follows :—

They submitted that the concerned workman had been served with a notice vide letter No.AP/95/32 dated 6/10-4-95 under signature of the Project Officer, Angarpathra colliery about his dismissal from service, illegally, arbitrarily and violating the principles of natural justice. They submitted that the charge of habitual absentism brought against the concerned workman had no basis at all. They disclosed that the concerned workman had no intention to remain himself absent from duty but the circumstances compelled him time to time to be absent as there was no control over the unexpected ill health of the workman or any member of his family. They submitted that there was no other male member in the family of the workman to look after the affairs of his family at his native village, which also sometimes led him to remain absent

from duty. They submitted that the management did not consider all these vital factors before dismissing him from service on the basis of arbitrary enquiry submitted by the Enquiry Officer. They alleged that such order of dismissal was not only biased but also motivated.

In the circumstances, the sponsoring Union submitted their prayer to pass award with a direction to the management to reinstate the concerned workman in service with full back wages and other consequential relief setting aside the order of dismissal.

2. Management on the contrary after filing written statement-cum-rejoinder have denied all the claims and allegations which the sponsoring Union asserted in the written statement on behalf of the concerned workman.

They submitted that the concerned workman developed the habit of absenting from his duties without permission, information and also without sufficient cause from time to time. The concerned workman in the years 1991, 1992 and 1993 worked for 48 days, 30 days and 60 days respectively. He started absenting from duty continuously with effect from 27-10-94 without any information or permission from the management and also without any justifiable cause. Accordingly, he was issued with a chargesheet dated 22-1-94 with the charge of committing misconduct under clause 26.1.1 of the certified standing orders. The concerned workman in reply submitted by him admitted his guilt and prayed for mercy. However, as the reply given by the concerned workman was not satisfactory the disciplinary authority decided to hold domestic enquiry against him and appointed Sri J. K. Singh as the Enquiry Officer. They submitted that the said enquiry was held against the concerned workman in his presence and he fully participated the said proceeding. Full opportunity was also given to the concerned workman to defend his case. They submitted that after completing the domestic enquiry said Enquiry Officer submitted his report holding him guilty to the charges and accordingly, after considering the Enquiry report and consulting all other aspects the disciplinary authority dismissed the concerned workman from his service vide letter date 6/10-4-95. They categorically denied the fact that the Disciplinary authority illegally, arbitrarily and violating the principle of natural justice dismissed the concerned workman from his service. Accordingly, they submitted prayer to pass award rejecting the claim of the concerned workman.

3. **POINTS TO BE DECIDED**

"Whether the action of the management of Angarpathra Colliery of M/s. BCCL in dismissing Shri Shankar Vishwakarma, Ex-M/Loader w.e.f. 6/10-4-95 from the services of the company the ground of unauthorised absence w.e.f. 27-10-94 is legal and justified? If not, to what relief the workman is entitled?"

4. **FINDING WITH REASONS**

It transpires from the record that before taking up final hearing of this case on merit the issue relating to preliminary point was taken up for consideration to ascertain if domestic enquiry held against the concerned workman was fair, proper and in accordance with the principle of natural justice. It transpires from the record that the said issue on Pre-point was decided by this Tribunal vide order No. 10 dated 23-12-03 to the effect that domestic enquiry held against the concerned workman was fair, proper and in accordance with the principle of natural justice. In the circumstances at this stage there is no reason at all to rediscuss this issue here again.

It is the specific contention of the management that the concerned workman was in the habit of remaining himself absent from duty without giving any prior intimation or taking any permission from them. They disclosed that during the year 1991, 1992 and 1993 the concerned workman attended to his duty for 48 days, 30 days and 60 days respectively. He started himself absenting from duty again from 27-10-94 without any information or taking any permission from the management and for which he was issued a chargesheet dated 22-1-94 without any information or taking any permission from the management and for which he was issued a chargesheet dated 22-1-94 charging him for commission of misconduct under clause 20-1-1 of certified Standing Order. The chargesheet during evidence of MW-1 was marked as Ext. M-1. Concerned workman submitted his reply to the charge sheet wherein he admitted his guilt and prayed for mercy. The reply given by the concerned workman during his evidence was marked as Ext.M-2. During enquiry proceeding the concerned workman took the plea that the could not attend to his duty owing to illness of his wife. He begged mercy before the enquiry officer and assured him not to repeat such practice in future.

It transpires that in course of hearing the concerned workman did not adduce the evidence to substantiate his claim that owing to illness of his wife he could not attend to his duties. He had ample scope to produce necessary medical papers to justify his claim that his wife actually was lying ill and for which he did not get scope to attend his duty. It is the specific allegation of the management that it was not the solitary occasion when the concerned workman remained on unauthorised leave. They alleged specifically that during the years 1991, 1992 and 1993 the concerned workman attend his duty for 48 days, 30 days and 90 days respectively. Referring this statistics the management submitted that the concerned workman was in the habit of remaining himself absent from duty without intimation to the management. The sponsoring Union in the written statement submitted on behalf of the concerned workman disclosed that there was no intention on his part to remain absent from his duty but the circumstances compelled him time to time to be absent as there was no control over his unexpected ill health or any member of his family. They further disclosed that there was no male

member in his family to look after the affairs of his family at his native village and that circumstances compelled him to make him absent from duty.

In is fact that the person concerned cannot be held responsible if he is lying ill. But if such plea is taken only to shield himself in that case it deserves otherwise interpretation. The sponsoring Union in course of hearing got ample scope to substantiate their claim but they did not consider necessary to do so. Even they did not consider necessary to produce a single medical paper to show that either concerned workman or his family members was lying ill. It is seen from the statistics submitted by the management that during the period of three years the concerned workman attended his duty in all for 168 days. This figure shows that the concerned workman converted his place of his work as his sweet home to use the same as of his choice ignoring all code of conduct of discipline to be maintained by a workman. It cannot be considered as a ground at all that the concerned workman had to go on leave as there was no male member at his native village. If this fact is to be tasken as a ground for enjoyment of unauthorised leave in that case it can be guessed easily what will be the position in the Industry. The sponsoring Union actually intended to mean that management shall be debarred from taking any step if a workman in such position remain on unauthorised leave.

No satisfactory explanation is forthcoming why the concerned workman did not consider necessary to intimate the management before starting enjoyment of such unauthorised leave. To that effect also no satisfactory explanation is forthcoming on the part of either workman or of the sponsoring Union. It is seen that inspite of such bad conduct in the matter of his attendance he again went on unauthorised leave from 27-10-94. The chargesheet was issued to the concerned workman on 22-1-95 *i.e.* after remaining himself absent unauthorisedly for about three months with the allegation of committing misconduct under clause 26-1-1 of the Certified Standing Order. I have carefully considered all enquiry proceeding papers and also the enquiry report. It is seen that the management in course of hearing has well been able to establish the charge brought against the concerned workman and for which the concerned workman was dismissed from his service issued by the management dated 6/10-4-95 (Ext. W-4).

Now the point for consideration is whether the concerned workman is entitled to get any relief under Section 11A of the I.D. Act, 1947. Section 11A of the I.D. Act speaks as follows :—

> "Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require."

Therefore, according to this section there is scope for modification of the order of dismissal if it is established that the order passed was unjustified on the face of the punishment.

Here in the instant case concerned workman remained on unauthorised leave for years together. No doubt during hearing the concerned workman took different plea and begged apology for the offence committed by him. He however has failed to produce any cogent paper in support of his plea for remaining himself absent from duty. Therefore, if the conduct of the concerned workman is taken into consideration there is scope to believe that such plea of mercy was taken by him as a shield. He did not care at all to keep the discipline of the management as a worker for smooth running of the production. Learned Advocate for the management submitted that it is not the intention of the management to victimise any worker but if the conduct of any worker exceeds all limits and if his act becomes prejudicial to the interest of the management in maintaining discipline of the Industry in that case they do not have any way out but compelled to take such unwanted decision which they have taken against the concerned workman. Disclosing this fact learned Advocate further submitted that in the circumstances if my lenient view is taken in favour of the concerned workman in that case there will be a serious impact in the administration to maintain discipline amongst the workman. I have carefully considered the submission of the learned Advocate for the management in relation to the misconduct committed by the concerned workman. I find that the submission of the Learned Advocate cannot be wiped out just on taking the ground that the concerned workman has prayed for mercy. I do not find anything relying on which there is scope to say that punishment inflicted on the concerned workman was unjustified. Accordingly as the concerned workman has prayed for mercy I am reluctant to consider it as a ground to set aside the order of dismissal if the conduct of the concerned workman is looked into in view of my discussion above applying the provision of the Section 11-A of the I.D. Act.

In the result, the following award in rendered :—

"The action of the management of Angarpathra colliery of M/s. BCCL in dismissing Shri Shanker Vishwakarma, Ex-M/Loader w.e.f. 6/10-4-95 from the services of the company on the ground of unauthorised absence w.e.f. 27-10-94 is legal and justified. Consequently, the concerned workman is not entitled to get any relief."

B. BISWAS, Presiding Officer

नई दिल्ली, 22 अप्रैल, 2004

का. आ. 1151.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा.को.को.लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II धनबाद के पंचाट (संदर्भ संख्या 71/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-04-2004 को प्राप्त हुआ था।

[सं. एल-20012/40/97-आई.आर. (सी-1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 22nd April, 2004

S.O. 1151.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 71/98) of the Central Government Industrial Tribunal/Labour Court, II Dhanbad now as shown in the annexure, in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 19-04-2004.

[No. L-20012/40/97-IR (C-1)]

S.S.GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

SHRI B. BISWAS, Presiding Officer

In the matter of an industrial Dispute under Section 10 (1) (d) of the I.D. Act., 1947.

REFERENCE NO. 71 OF 1998

PARTIES : Employers in relation to the management of M/s. B.C.C.L and their workman.

APPEARANCES :

On behalf of the workman : Mr. D. Mukherjee, Advocate.

On behalf of the employers : Mr. B. M. Prasad, Advocate.

State : Jharkhand Industry : Coal.

Dated, Dhanbad, the 16th March, 2004

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers of conferred on them under Section 10(1) (d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/40/97-I.R. (C-I), dated, the 11th/12th March, 1998.

SCHEDULE

"Whether the action of the General Manager, Govindpur Area No. III of M/s. B.C.C.L., P.O. Sonardih, (Dhanbad) in denying to allow Shri Ramu Bhuia Wagon Loader to resume his duties is justified? If not, to what relief is the concerned workman entitled to?"

2. The case of the concerned workman according to Written statement submitted by the sponsoring Union on his behalf in brief is as follows:—

The sponsoring Union submitted that the concerned workman was a permanent wagon loader at Govindpur Colliery. They submitted that he owing to his illness started absenting from duty but to that effect he gave due information to the management. They submitted that after recovery from his ailment when he came to his place of work with a view to resume his duties he was not allowed to do so by the management without assigning any reason. As a result the sponsoring Union took up his case and submitted representation to the management with a request to allow him to resume his duty but to no effect. As a result seeing no other alternative they raised an industrial dispute before the ALC (C), Dhanbad for conciliation which ultimately resulted reference to this Tribunal for adjudication. They alleged that the management illegally, arbitrarily and violating the principle of natural justice did not allow the concerned workman to resume his duties. Accordingly, they submitted prayer to pass award directing the management to allow the concerned workman to resume his duties with all consequential relief.

3. Management on the contrary after filing written statement-cum-rejoinder denied all the claims and allegations which the sponsoring Union asserted in their written statement submitted on behalf of the concerned workman. They disclosed that the concerned workman was working at Govindpur colliery as Wagon Loader during the years 1973-74. They submitted that he was incapable of performing his duties and for which frequently he would remain himself absent from duty without any permission or information. Thereafter he stopped attending his duties from 1975 and left his employment without any information to the management. Actually he voluntarily abandoned his service and considering his short period of his employment of irregular in nature did not initiate any action against him and treated his case as abandonment of his service voluntarily. they had no part to play in this regard.

Thereafter in the year 1994 the concerned workman posing himself as Ramu Bhuia made a complaint to ALC(C) Dhanbad through Secretary of Bihar Colliery Kamgar Union Dhanbad bringing all allegations against the management maliciously with a view to create pressure so that he may be allowed to resume his duties. They submitted that the delay of about 20 years in raising the dispute makes the present reference illegal and invalid and liable to be summarily rejected. They submitted that if the workman was really interested in his job he could have the scope to take up his matter directly with the

management. Accordingly, they are in doubt if the concerned workman is actual Ramu Bhuia who worked in an irregular manner as wagon loader during the years 1973-74 and who abandoned his service from 1975. They submitted that as Ramu Bhuia left his employment at his own accord in the year 1975, there was no reason for him to demand for employment in the year 1999. They alleged that the concerned workman by way of false impersonation has made out a false and fabricated case for entering into the employment of the company with the help of litigation. In the circumstances, they submitted prayer to pass award rejecting the claim of the concerned workman.

4. Points to be decided.

"Whether the action of the General Manager, Govindpur Area No. III of M/s. BCCL, P.O. Sonardih (Dhanbad) in denying to allow Shri Ramu Bhuia Wagon Loader to resume his duties is justified? If not to what relief is the concerned workman entitled to ?"

5. Finding with reasons.

It transpires from the record that inspite of giving ample opportunity the sponsoring Union did not consider necessary to adduce any evidence either oral or documentry with a view to substantiate his claim. In the circumstances management also declined to adduce any evidence in support of their claim.

Accordingly, considering the facts disclosed in the pleadings of both sides let it be looked into if the claim of the concerned workman stands on cogent footing or not.

Considering the facts disclosed in the pleadings of both sides there is no dispute to hold that one Ramu Bhuia was a Wagon Loader at Govindpur colliery during the years 1973-74. It is the contention of the sponsoring Union that during the said period as the concerned workman fell ill he could not attend to his duty. However, to that effect he gave due intimation to the management. They disclosed that after recovery from ailment when the concerned workman come to his place of work with a view to resume his duty he was not allowed by the management to join his duty and for which they took up the case of the concerned workman and submitted representation to the management with request to allow him to resume his duties but to no effect. The peculiar thing which is forthcoming from the facts disclosed in the written statement submitted by the sponsoring Union is that the sponsoring Union kept themselves completely silent actually in which year and how long the concerned workman was lying ill. From the written statement of the sponsoring Union I also do not find any whisper actually when the concerned workman after recovery from his ailment came to his place of work with a view to resume his duties.

On the contrary it is the case of the management that as the concerned workman was in capable of performing his duties he was in the habit of remaining himself absent from duty and ultimately in the year 1975 he completely deserted his service. They alleged that after a lapse of about 19 years the concerned workman in the name of Ramu Bhuia appeared and lodged a complaint through the sponsoring union before the ALC(C) with a prayer for resumption of his duties. Management casted doubt if the workman who has raised the dispute was original Ramu Bhuia or not.

Before taking into consideration of this allegation I think there will be no dispute to hold that the sponsoring Union raised Industrial dispute after a lapse of 19 years to get their relief. In course of hearing the sponsoring Union has failed to produce a single medical paper to show that the concerned workman was actually lying ill. Not a scrap of paper is also forthcoming to show that the concerned workman gave due intimation to the management about his ailment. No evidence is also forthcoming to show that after recovery he came to his place of work with a view to resume his duty but the management did not allow him to join. No cogent paper is also forthcoming before this Tribunal in which month and year sponsoring Union submitted representation to the management with a request to allow the concerned workman to resume his duties. Actually not an iota of evidence could be produced by the sponsoring Union in view of the discussion made above.

It is the specific claim of the management that since 1975 the concerned workman deserted his service. To rebut this claim the sponsoring Union have also failed to produce any cogent evidence. If the claim of the management is taken into consideration that since 1975 the concerned workman deserted his service in that case responsibility rests with the sponsoring Union to explain why they made such inordinate delay of 19 years to raise Industrial Dispute before the ALC(C), Dhanbad.

It is really shocking to note that excepting claim for resumption of duty the sponsoring Union have failed to adduce a single cogent document that absence of the concerned workman was genuine and for which he could not resume his duties.

It is fact that in the Industrial Disputes Act there is no provision to disclaim the demand of the concerned workman taking the ground of limitation. But for that reason the concerned workman/union cannot exonerate their responsibility to account for reasonable ground for causing delay in raising dispute. Here according to the management the concerned workman out of his own accord and volition deserted his service in the year 1975. If this fact is taken in to consideration the concerned workman/ Union must be liable to assign cogent reason why they took 19 years time to raise the dispute. 19 years delay must be considered as inordinate delay and it must be accounted for. I find no hesitation to say that neither the concerned workman nor his union has been able to satisfy the ground of making such inordinate delay. Management has casted doubt if the workman who has raised dispute is actually Ramu Bhuia who was Wagon Loader at

Govindpur Colliery and who deserted his service in the year 1975. Such doubt could easily be eliminated if the concerned workman after appearing personally would produce relevant paper in support of his claim.

It is the specific claim of the sponsoring Union that management did not allow the concerned workman to resume his duty. I have already discussed above that the concerned workman has lamentably failed to substantiate his claim. As the sponsoring Union has brought specific allegation against the management they cannot avoid their responsibility to establish the same. I find no hesitation to say that excepting bringing allegation the sponsoring union have failed to produce any cogent evidence with a view to substantiate their claim and for which I hold that the concerned workman is not entitled to get any relief.

In the result, the following award is rendered :—

"The action of the General Manager, Govindpur Area No. III of M/s. BCCL, P.O. Sonardih (Dhanbad) in denying to allow Shri Ramu Bhuia Wagon Loader to resume his duties is justified. Consequently, the concerned workman is not entitled to get any relief."

B. BISWAS, Presiding Officer

नई दिल्ली, 22 अप्रैल, 2004

का. आ. 1152.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भोजपुर रोहताश ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं० 2, धनबाद के पंचाट (संदर्भ संख्या 95 आफ 1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-04-2004 को प्राप्त हुआ था।

[सं. एल-12012/89/95-आई.आर. (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 22nd April, 2004

S.O. 1152 —In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 95 of 1996) of the Central Government Industrial Tribunal No. II Dhanbad now as shown in the annexure, in the Industrial Dispute between the employers in relation to the management of Bhojpur Rohtas Gramin Bank and their workman, which was received by the Central Government on 21-04-2004.

[No. L-12012/89/95-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) DHANBAD.

In the matter of a reference under Sec. 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 95 of 1996

PARTIES : Employers in relation to the management of Bhojpur Rohtas Gramin Bank.

AND

Their Workmen.

PRESENT : Shri B. Biswas, Presiding Officer.

APPEARANCES :

For the Employers : Shri B. M. Sahay, Advocate.

For the Workmen : Shri B. Prasad, President, Bihar Provincial Gramin Bank Employees Association.

State : Bihar Industry : Bank.

Dated, the 30th March, 2004.

AWARD

By Order No. L-12012/89/95-I.R. (B-I) dated, the 3rd September, 1996 the Central Government in the Ministry of Labour, in exercise of the powers conferred by clause (d) of sub-section (1) of Sec. 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Bhojpur Rohtas Gramin Bank, Arrah in terminating the services of Sh. Vidya Nand Singh, Ex-Peon is justified and legal? If not, to what relief the workman is entitled to?"

2. The case of the concerned workman according to the Written Statement submitted by the sponsoring Union on his behalf, in brief is as follows :—

The sponsoring union submitted that the concerned workman Vidya Nand Singh, was orally appointed by the management of Bhojpur Rohtas Gramin Bank at Rajpur branch as a temporary Peon on 7-2-89. The workman used to perform the following duties :

(i) Taking out Registers, Ledgers from the Almirah and putting the same on the table, counter;

(ii) Carrying out token book, scroll book;

(iii) Cleaning tables, chairs, counters;

(iv) Sweeping Bank's floor;

(v) Opening and closing of Bank's Gate;

(vi) Posting of Mails to the Post Office;

(vii) Carrying Daks through Peon Book and distributing the same to the Customers of the Bank;

(viii) Stitching of currency notes and vouchers;

(ix) Serving water, tea to the members of staff and customers and performing other sundry jobs of a Peon;

and used to work from 9.30 a.m. to 5.30 P.M. every day. They submitted that the concerned workman worked in the said Rajpur Branch of the Bank from 7-2-89 to

27-2-92 without any interruption and during this period he put his attendance for more than 240 days in each calendar year. Thereafter his service was utilised upto 30-6-93 with some breaks and he was stopped from performing his duty abruptly w.e.f. 1-7-1993. They disclosed that as wages the management used to pay him at the rate of Rs. 5/- per day on weekly basis and sometimes twice in a week. They alleged that the workman was forced to take payment on different names on many occasions on threat of loosing his job. He was not paid bonus for the period of his working as per the provisions of Payment of Bonus Act, 1965. They disclosed that the termination of the workman comes under Sec. 2(oo) of the I.D. Act, 1947. They further alleged that before stopping the concerned workman from service the management neither gave any notice nor any notice pay as per provision laid down in Section 25F of the I.D. Act. Accordingly, after stopping his service the concerned workman submitted representation for his reinstatement but to no effect and for which the concerned workman on 7-2-1994 raised an industrial dispute before the A.L.C. (C), Patna for conciliation which ultimately resulted reference to this Tribunal for adjudication. They alleged that such stoppage of work of the concerned workman by the management was illegal, arbitrary and in violation of the principle of natural justice. Accordingly, the concerned workman submitted prayer through the sponsoring union for his reinstatement in service with full back wages.

3. The management, on the contrary, after filing written statement-cum-rejoinder have denied all the claims and allegations which the sponsoring union asserted in the written statement on behalf of the concerned workman. They submitted that the concerned workman was never appointed in the services of the Bank and as such the question of termination of his service did not arise. Actually the concerned workman was engaged by Rajpur (Rohtas) branch to perform labour oriented job such as cleaning of floors, desk tables, chairs, serving water to staff and customers etc. on daily wages as per need of the Bank and for which there was no scope to place his claim that he was an employee of the Bank within the meaning of 'workman' under the provision of Industrial Disputes Act, 1947. They submitted that there was no post of peon in the Bank and, as such, the question of the workman's oral appointment as temporary peon stands exposed. They submitted that oral appointment is not permissible/ prevelent in the Bank. Moreover, he has failed to produce any document in support of his claim that he was appointed as temporary peon in the Bank which further exposed the falsity of the claim. Actually the claimant used to do part time work of sweeping and cleaning the Bank and for which he was paid wages for the period/hours he performed the job. They categorically denied the fact that the concerned workman was stopped from his work w.e.f. 1-7-93. He was a part time sweeper and for which he has been paid due wages for the hours he worked. They further submitted that the provision of bonus as per Bonus Act will have no application in the instant case of the concerned workman as he was a casual labour/part time sweeper on daily wage basis. They also denied the fact about application of Sec. 2(oo) of the Industrial Disputes Act in case of the concerned workman. They disclosed that as the concerned workman was engaged absolutely for time to time job of sweeper the question of giving any notice or payment of any compensation as notice pay as provided under Sec. 25-F did not arise at all. They disclosed that as the concerned workman worked in the said branch of the Bank as part-time sweeper on daily wage as and when needed by the Bank from time to time no question of termination arises and such allegation contained in the petition has been categorically denied by them. They further submitted that as engagement of the concerned workman was absolutely on part-time basis the question of performing his duties for 240 days in a year does not arise at all. They submitted that casual sweepers who have completed 240 days work in one calendar year were only considered for regularisation. They disclosed that reliance of NIT Award referred to in the petition is of no assistance to the claim of the claimant rather it negates his case as would be evident from para 16(3) at page 21 of NABARD, Bombay letter No. NB. IDD. RRCBD. No. C. 4559/316 (Gen)-92/93 dated 20-3-93 (implementation of NIT) Award read with Equation Committee Recommendations—Working Group Report). The relevant portion of the said para 16(3) J is as under :

". . . . . in respect of RRBs which has appointed sweepers on contract basis or mannual labour job basis or floor area basis and paid/paying them through contingencies, such sweepers do not form part of the RRB Personnel as such . . . . ."

They submitted that in Para 16 I(a) at page nos. 17 & 18 of the NABARD aforesaid letter dealt with about regularisation as follows :

". . . . . it is, therefore, decided that all those employees in sub staff cadre who were in the service of the RRB as on 22-2-1991 (date on which GOI had notified acceptance of NIT Award read with the Equation Committee Report) and who have completed 240 days of continuous service after that date may be treated as regular employees of RRBs with effect from 22-2-1991. It is, however, decided that in respect of employees whose cases have already been settled/regularised prior to that date need not be reopened."

Referring the quotation above the management submitted that it will be obvious that the case/dispute in hand has no relevance nor is covered by the NIT Award or the Working Group Report circulated by NABARD's aforesaid letter dated 20-3-93 and any claim in the petition under reply on such basis, is misplaced.

Stating all these facts the management submitted that the concerned workman is neither entitled for reinstatement

with back wages nor for regularisation in Class-IV employee and for which his claim is liable to be rejected.

POINTS TO BE DECIDED :

4. "Whether the action of the Management of Bhojpur Rohtas Gramin Bank, Arrah, in terminating the services of Shri Vidya Nand Singh, Ex-Peon is justified and legal? If not to what relief the workman is entitled to?"

FINDING WITH REASONS :

5. It transpires from the record that the management in order to substantiate their claim examined five witnesses as MW-1 to MW-5. The concerned workman also in support of his claim examined three witnesses including himself as WW-1 to WW-3.

MW-1 during his evidence disclosed that from 9-5-89 to 22-10-92 he was posted as Branch Manager at Rajpur Rohtas Gramin Bank. He disclosed that when he joined the said branch he found the concerned workman to work there. He disclosed that the workman concerned was engaged as part-time sweeper in the said branch. Actually the brother of the concerned workman was a permanent messenger of Rajpur Rohtas Gramin Bank. During his absence the concerned workman was engaged as sweeper. He further disclosed that it was the duty of the messenger to sweep the bank and for which during the absence of the said permanent messenger i.e. the brother of the concerned workman he was engaged as sweeper absolutely on casual daily rated basis for the purpose of sweeping the Bank. This witness during his evidence admitted that as per circular issued by the Head Office no person can be engaged on daily rated basis to work as sweeper or for any other work. This witness disclosed further that during his tenure from 9-5-89 to 22-10-92 the concerned workman worked for 175 days only in the said branch as part-time sweeper, but in view of the said circular as a part of punishment the Head Office deducted from his salary the wages which was paid to the concerned workman for the said period. Before deduction of his salary the authority issued him a show-cause letter and thereafter issued order for deduction of Rs. 2,175/- from his salary in connection with payment of wages to the concerned workman for violation of that order. The documents during his evidence were marked as Exts. M-1 and M-2. This witness further disclosed that similar order was passed against another Branch Manager of Rajpur Rohtas Gramin Bank, during whose period the concerned workman also worked on daily wage basis for his illegal engagement. This witness, however, during his evidence failed to disclosed actually in which year the concerned workman was engaged as sweeper at Rajpur Rohtas Bank. However, he disclosed that he used to pay Rs. 10/-per day as daily wage to the concerned workman. This witness further disclosed that he did not issue any letter of appointment to the concerned workman for his engagement as sweeper at his branch. Moreover, no contract was entered into between the Bank and the concerned workman for his work at the said branch time to time on daily wage basis. During evidence of this witness a letter issued by the Chairman showing the period of work performed by the concerned workman was marked as Ext. W-1 .

MW-2 during his evidence disclosed that being directed by the Head Office he made an enquiry in the matter of engagement of the concerned workman at Rajpur Rohtas Bank by the Branch Manager and after inspecting the relevant papers he submitted his report to the Head Office over that issue. The copy of the report duly written and signed by the witness which he submitted to the Head Office was marked Ext.-M-3.

MW-3 during his evidence disclosed that on 8-6-92 he joined and took full charge of the said branch in October, 1992. This witness categorically denied the work of the concerned workman at Rajpur branch during his tenure. He also failed to disclose if the concerned workman worked in the said branch under previous Branch Manager. This witness disclosed that during his tenure he received a circular not to engage any daily rated worker as till a permanent messenger is posted. The circular during his evidence was marked as Ext. M-4. He disclosed that in case of permanent messenger goes on leave in that case the duty of the Branch Manager to intimate the fact to the Head Office and after taking permission from Head Office they are allowed to get services from outsider on daily rated basis but the condition is that they would not issue any voucher in the name of the person hired for the work as because the voucher is issued in the name of Branch Manager and thereafter payment is made to the concerned workman. He disclosed further that engagement of such daily rated worker only comes to a question if the permanent messenger goes on leave. This witness also disclosed that the job allotted to engaged worker on daily rated basis is only for sweeping the floor and keeping water in the branch. This witness disclosed that from the pay of the Branch Manager, K.B. Pandey for illegal engagement of daily rated worker at his branch an amount was deducted which was paid to that worker as his wages. The copy of the order during his evidence was marked Ext. M-5. The show-cause letter given to K.B. Srivastava, Branch Manager by the Head Office for his engagement of daily-rated worker illegally was marked as Ext. M-6. This witness further admitted that as per Bank's circular the services of some daily rated workers were regularised who fulfilled the criteria in the year 1984-85. Similar regularisation of some workmen were made in the year 1987 and 1990 as per order of the Head Office. The case of the concerned workman was not considered for regularisation by the Head Office as he failed to fulfil the criteria. During his evidence some other document were marked as Exts. M-7 to M-15 (formal proof being dispensed with). This witness during his cross-examination categorically denied the fact of engagement of the concerned workman by him during his tenure in the said

branch. However, he admitted the photo copy of the payment voucher dated 13-6-92 which was signed by the Addl. Manager, Sri K.P. Srivastava, marked Ext. W-2. This witness disclosed that by an order issued by the Head Office the salary of the Branch Manager for adjustment of the amount which was paid as daily wages to the concerned workman was deducted. However, he admitted that the said order was passed after the industrial dispute was raised by the concerned workman. In his evidence MW-4 corroborated the evidence of other witnesses. MW-5 durig his evidence disclosed that the management started appointing messenger on regular basis on the basis of guideline issued by the Govt. of India in the year 1984 and also on the basis of circular issued by the management in the year 1985. As per the said circular the management decided to provide regular messenger to the branches having business of more than 40 lakhs per annum. Rajpur (Rohtas) branch was also provided with regular messenger in the year 1985 as per the said yardstick. He disclosed that the Branch Manager of Rajpur (Rohtas) branch was not authorised to appoint any messenger on daily wage basis when the said branch was provided with regular messenger. Accordingly, engagement of the concerned workman to act as messenger in the said branch by the Branch Manager was illegal. He further disclosed that the moment management came to the knowledge of this illegal engagement explanation was called for from the said Branch Manager and thereafter the management deducted the amount which was paid to the concerned workman as wages from his salary. This witness during his evidence further disclosed that neither he was aware when the concerned workman was first engaged by the Branch Manager in the said branch on daily wage basis nor he was able to say how much amount was paid to him as wages. He also failed to disclose for how many days the concerned workman worked in the said branch.

WW-1 i.e. the concerned workman, during his evidence disclosed that he was engaged as Peon by the management of Rajpur (Rohtas) Gramin Bank on 1-2-89. He disclosed that as part of his duty he used to sweep the floor of the Bank, to supply drinking water to the staff, used to place ledgers and other official registers on the table of the staff taking out the same from Almirah etc. He also used to carry dak to the Post Office and also to carry letters to the Head Office and also used to stitch notes under direction of the officer. He disclosed that his duty hour was from 9.30 a.m. to 5.30 p.m. He submitted that he had to perform all job under the direction of the Manager of that branch. He further disclosed that initially management used to pay him wages at the rate of Rs. 16.75 per day and thereafter it was enhanced to Rs. 21.75 per day but subsequently it was reduced by Rs. 10/-per day. He further disclosed that payment of wages was paid through voucher. He worked there upto 30-6-1993, as the Manager stopped him from work from the evening of that date. He alleged that before stopping him from work management neither paid him any compensation in lieu of notice or issued any notice to him. He further disclosed that he worked under the management in the said branch continuously for more than 240 days in each calendar year. This witness during his evidence disclosed that the management did not issue any letter of appointment before he was engaged as Peon at Rajpur (Rohtas) branch from 1-2-89. He admitted that Hridaya Nand was posted as permanent messenger/peon. He admitted that Nagendra Nath Ojha, Branch Manager engaged him as Peon in the said branch on 1-2-89 and after Mr. Ojha the Branch Manager was Mazar Hussain Ansari and thereafter Sheo Narayan Singh was posted as Branch Manager there. He further admitted that the management used to pay him wages for the days of work which he performed and no wage was paid to him during Holidays and Sundays. He further admitted that his name was neither forwarded to that branch from any Employment Exchange nor he submitted any application to the Branch Manager for his appointment as peon. Actually Mr. N.N. Ojha personally called him and engaged in the said Bank. However, in that regard he did not issue any letter to him. WW-2 was a Cashier-cum-Clerk posted at Rajpur branch of Bhojpur Rohtas gramin Bank from 16-8-90 to 8-9-93. This witness disclosed that when he joined there he found the concerned workmen to work and found him to work in the said branch till the date of his departure on transfer. This witness further disclosed during cross-examination that Hridyanand Singh, elder brother of the concerned workman, was posted as permanent messenger at Rajpur Branch. He admitted that proceeding was initiated against the Branch Manager for allowing the concerned workman to work at Rajpur Branch and it was ordered that wages paid to the concerned workman should be deducted from his salary and the same was deducted from his salary. WW-3 was also a Clerk-cum-Cashier and posted at Rajpur Branch of Bhojpur (Rohtas) Gramin Bank from 2-5-90 to June, 1996. During his evidence he disclosed that he found the concerned workman to work there as part-time sweeper. Therefore if the evidence of WW-1, WW-2 and WW-3 are taken into consideration it transpires that the concerned workman was not engaged by the Branch Manager of Rajpur Branch following the appointment policy maintained by the management. It is seen that his name was neither forwarded by the Employment Exchange for consideration of his appointment nor even the concerned workman submitted any application to the management for consideration of his appointment. WW-1, the concerned workman admitted that no letter of appointment was issued to him. He admitted categorically that Sri N.N. Ojha, Branch Manager of Rajpur Branch called him and engaged him to work in the said Branch and for such engagement Mr. Ojha did not issue any letter of engagement. It is astonishing to note that the Branch Manager held that capacity to engage a person without maintaining the norms

in the matter of employment of any Class-IV worker. It is the contention of WW-1 that he worked as a Peon during the period in question and used to perform all duties of a Peon starting from 9.30 a.m. to 5.30 p.m. every day. He further disclosed that during the period from 1-2-89 till 30-6-93 he worked at Rajpur Branch continuously and put his attendance for more than 240 days in each calendar year. On the contrary, from the evidence of WW-3 it transpires that the concerned workman was a part-time sweeper and as per part-time sweeper he worked there during the period in question. Both WW-2 and WW-3 admitted that wages used to be paid to the concerned workman through voucher. Considering the evidence of these three witnesses two things have come out very clearly, namely, (i) that the concerned workman worked in the said branch as part-time sweeper and (ii) that such engagement was made absolutely contravening the employment policy of the management i.e. his engagement was the outcome of whimsical choice of the Branch Manager. MW-1 during his evidence disclosed that from 9-5-89 to 22-10-92 he was posted at Rajpur (Rohtas) Bank as Branch Manager. He admitted that when he joined he found the concerned workman to work there as part-time sweeper and knowing fully well of the fact that elder brother of Hridyanand Singh was posted there as permanent msssenger/sweeper. This witness disclosed that the concerned workman was allowed to work as sweeper during the absence of his elder brother, to sweep the Bank premises and also to perform the duty of messenger absolutely on casual daily rated basis. It is seen that this witness allowed the concerned workman to work as part-time sweeper knowing fully about the existence of the circular issued by the Head Office that no person could be engaged on daily rated basis to work as sweeper or for any other work. This witness disclosed that during his tenure the concerned workman worked there for 175 days and for which in view of the said circular as a part of punishment Head Office deducted from his salary a sum of Rs. 2175/- which was paid to the concerned workman as wages. In this connection the order issued by the Head Office, marked Ext. M-2 may be taken into consideration. From this order it transpires that a sum of Rs. 2175/- was ordered to be deducted from the salary of MW-1 for payment of wages to the concerned workman for the period of work done by him i.e. for 197 days during the period from 1991 to 92. Therefore, it is clear as per order that the concerned workman during the period of MW-1 worked for 197 days and not 175 days as part-time sweeper. This witness disclosed that similar order was passed against another Branch Manager of Rajpur (Rohtas) Bank during whose period the concered workman also worked on daily wage basis out of his illegal engagement. Evidence of MW-2 if is taken into consideration will expose clearly that he was directed to inspect the Rajpur (Rohtas) branch by the Head Office and to submit report in the the matter of engagement of the concerned workman by the local Branch Manager. This witness after inspection submitted his report which during his evidence was marked Ext. M-3. From his report it transpires that the concerned workman worked at Rajpur (Rohtas)Gramin Bank from 4-2-89 to 22-4-93 and in all he worked for 347 days. I have carefully considered the report and from that report it transpires that in the year 1989 the concerned workman worked for 46 days, in the year 1990 he worked for 59 days, in the year 1991he worked for 196 days, in the year 1992 he worked for 45 days and in the year 1993 he worked for 1 day. From the evidence of MW-4 it transpires that the Branch Manager was empowered to engage a temporary messenger in place of permanent messenger in case of his leave and in the case payment of wages should be given to that messenger through Branch Manager in his name. We have already got that Hridyanand Singh, the elder brother of the concerned workman was posted as permanent messenger at Rajpur (Rohtas) Bank. MW-1 disclosed that during leave of his elder brother the concerned workman was allowed to work as part time sweeper. If this fact is taken into consideration in that case there would not be any scope to raise any dispute, but it is seen that the Branch Managers exceeding their limit allowed the concerned workman to work there as part time sweeper inspite of existence of permanent messenger there illegally and without the knowledge of the Head Office. This fact will come into light if the evidence of MW-5 is taken into consideration. MW-5 categorically disclosed that the Branch Manager had no authority to engage a man on daily wage basis when the said branch was provided with regular messenger. This witness disclosed that since 1985 the management started appointing messenger on regular basis on the basis of guideline issued by the Government of India in the year 1984 and on the basis of circular issued by the management in the year 1985. As per the said circular the management decided to engage regular messenger to the branches having business of more than Rs. 40 lakhs per annum. This witness disclosed that Rajpur (Rohtas) Branch was also provided with regular messenger in the year 1985 as per the said yardstick. Therefore, from the evidence of MW-5 it is clear that permanent messenger was posted there when the Branch Manager whimsically engaged the concerned workman as part-time sweeper and on just and proper ground the management deducted the wages paid to the concerned workman by the said Branch Managers from their respective salaries. It is seen apart from other material documents that the management submitted vouchers showing payment of wages to the concerned workman during his working as part time sweeper at Rajpur (Rahtas) Gramin Bank. The vouchers during his evidence were marked Ext. M-15 series. If the vouchers are taken into consideration it would expose clearly that in no circumstances the concerned workman worked for 240 days or more than 240 days in a year. Therefore, onus absolutely was on the concerned workman to establish that he worked under the management in the said branch for

more than 240 days in a year from 1989 to June, 1993. No evidence is also forthcoming before this Tribunal That the concerned workman was engaged as a Peon by the Branch Manager of the said Bank. On the contrary, if the evidence of WW-3 and evidence of management's witnesses are taken into consideration it would expose clearly that he was engaged as part time sweeper and not full time Peon by the Branch Manager. Therefore, there was no scope at all for a part time sweeper to remain in work from 9.30 a.m. to 5.30 p.m. WW-1 during his evidence disclosed the nature of work which he had to perform while he was allowed to work there. WW-3, on the contrary, did not make any whisper in support of the claim of WW-I i.e. concerned workman. On the contrary, he categorically disclosed that the concerned workman used to perform his duty as part time Sweeper. Therefore, the question of regularisation of part time sweeper for rendering his duty of limited period out of the scheduled duty hours in any circumstances does not empower to claim his reinstatement complying the provision as laid down under Sec. 25-F of the I.D. Act.

Learned Advocate for the management in course of hearing referred to decisions reported in 2000(4) PLJR-771, 1991(1) PLJR-567, 2000(3) PLJR-91 and 1986 Lab. I.C. 1981. In the decisions referred to above their Lordhips of different High Courts observed that termination of engagement of persons working on daily wage basis amounts to retrenchment within the meaning of Sec.2(oo) and for which provision of Sec. 25-F of I.D. Act are not applicable in such cases. Here practically it has been admitted by the sponsoring union that the concerned workman was engaged as daily rated worker. If the decisions referred to above are taken into consideration there is no scope to say that the concerned workman should be treated as a 'workman' as per definition of Sec. 2(oo) of the I.D. Act, Apart from this fact it is clear that the concerned workman was not engaged as full time peon but was engaged as a part time sweeper and therefore there is no scope at all to say that Sec.25-F of the I.D. Act has attracted in this case as the management stopped him from work without giving any compensation in lieu of notice or without issuance of notice.

6. I have carefully considered all the materials on recored and I have failed to find out an iota of evidence relying on which there is scope to uphold the contention of the representative of the concemed workman in the matter of regularisation of the concerned workman to his service. I find no hesitation to say that there is no scope at all to consider that the concerned workman was retrenched as per difinition of Sec. 2(oo) of the I.D. Act.

In view of the facts and circumstances I hold that the concerned workman is not entitled to get any relief in view of his prayer.

7. In the result, the following award is rendered. The action of the management of Bhojpur Rohtas Gramin Bank, Arrah in terminating the services of Sh. Vidya Nand Singh, Ex. Peon, is justified and the concerned workmen is not entitled to any relief.

B. BISWAS, Presiding Officer

नई दिल्ली, 22 अप्रैल, 2004

का. आ. 1153.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ बीकानेर एण्ड जयपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण पटना के पंचाट (संदर्भ संख्या 25 सी आफ 2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-04-2004 को प्राप्त हुआ था।

[सं. एल-12012/[redacted]003-आई.आर. (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 22nd April, 2004

S.O. 1153.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 25 C of 2003) of the Industrial Tribunal Patna now as shown in the annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Bikaner & Jaipur and their workman, which was received by the Central Government on 21-04-2004.

[No. L-12012/36/2003-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

Reference No. 25C of 2003

Management of State Bank of Bikaner & Jaipur, Frazer Road, Patna and their workman represented by Bank Employees Federation, Bihar & Jharkhand, UCO Bank, Exhibition Road, Patna.

For the Management : None

For the Workmen : None

Present : Priya Saran, Presiding Officer, Industrial Tribunal, Patna

AWARD

The 13th day of April, 2004

By the adjudication order No. L-12012/36/2003-IR(B-I) dated 30-06-2003 the Government of India. Ministry of Labour, New Delhi has referred, under Clause (d) of Sub-section (I) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter to be referred to as 'the Act'), the following dispute between the management of State Bank of Bikaner & Jaipur. Frazer Road, Patna and their workman Sri Deo Kumar represented

by Bank Employees Federation, Bihar & Jharkhand for adjudication to this Tribunal :—

"Whether the action of the management in interpreting the circular No. PER/16/97-98 for the Patna City Branch of SBBJ in not allowing to the post of Head Cashier "E" and debarring the claim of Sri Deo Kumar for the said post is legal and justified? If not, what relief he is entitled to ?"

2. This is one of such cases, where the workman espouses dispute with all vehemence but sheds all the interest in due course probably on getting desired demand fulfilled by the management. The none of the parties in the instant case have come forward even after being noticed on several occasions either to file their written statement or contest the reference. There in-action aforesaid leads to a simple inference that they have either no case or they are not interested in pursuing the matter further for the reasons best known to them. The disinclination exhibited by the workman in agitating his claim before this forum simply suggests that he has no dispute whatsoever and so does not want to contest anymore. Needless to say, this Tribunal has but to deliver in the circumstances aforesaid a no dispute Award, as there is no material worth the name on the record to favour any of the parties.

3. It is accordingly ordered that no dispute between the parties in relation to the Reference exists.

4. Award accordingly.

Dicated & corrected by me.

PRIYA SARAN, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2004

का० आ० 1154.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एल०आइ०सी०ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं०-2, नई दिल्ली के पंचाट (संदर्भ संख्या 89/91) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-04-2004 को प्राप्त हुआ था।

[सं० एल-17012/115/90-आई आर (बी-II)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 26th April, 2004

S.O. 1154.—In presence of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 89/91) of the Central Government Industrial Tribunal-cum-Labour Court, No.2, New Delhi as shown in the annexure, in the Industrial Dispute between the employers in relation to the management of LIC of India and their workman, which was received by the Central Government on 26-04-2004.

[No. L-17012/115/90-IR (B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, RAJENDRA BHAWAN, GROUND FLOOR, RAJENDRA PLACE, NEW DELHI

I.D. No. 89/91

PRESIDING OFFICER : R. N. RAI

IN THE MATTER OF :—

HARISH CHANDER MIDHA

VERSUS

LIFE INSURANCE CORPORATION OF INDIA

AWARD

The Ministry of Labour by its letter No. L-17012/115/90-IR(B2) Central Government dt. 26-07-1991 has referred the following point for adjudication. The point runs as hereunder :—

"Whether the action of the management of Life Insurance Corporation in accepting the resignation of Shri H.C. Midha is justified. If not to what relief is the workman entitled to ?"

The claimant has filed statement of claim. In his statement of claim, he has stated that he was working as an office assistant since 26-2-1958 with Saharanpur Branch of LIC of India at Saharanpur. The workman had suffered in the past from mental disease and had been admitted to the mental hospital from where he was fully cured.

That during the month of February, 1989, the workman had an attack of mental depression and also there had been troubles of mental depression and also there had been troubles in his family both financially and also marital as his son-in-law left the workman's daughter alongwith her newly born daughter at his home permanently.

That on 10th of March, 1989 the workman requested the then Sr. Branch Manager LIC Saharanpur Branch Shri V. P. Sharma to grant the maximum leave to enable him to sort out his family problems and also take the treatment for his mental disease but he did not allow him the leave and also threatened him that he will get him dismissed from the service of LIC. The workman was already in a state of mental depression/disease, his mind was not sound at that time, and it appears that Sr. Branch Manager of LIC got his resignation letter signed from the workman at that time when he submitted his leave application for maximum period but the same was not sanctioned to the workman as per the letter of the Sr. Branch Manager, LIC Saharanpur dt. 11-3-1989.

That the workman received a telegram on 9-4-1989 from the Sr. Branch Manger, LIC Saharanpur which read as "Refer your resignation letter dt. 10th March, 1989, your resignation from service of the Corporation stands accepted by the competent authority effective 10th April, 1989."

That the workman was a confirmed employee of the LIC and he had no alternative job neither he was a rich person rather he has a big family of 10 members to support and also he had been in financial problems already and the question of his resigning could never had arisen under the normal and healthy circumstances.

That the workman had requested the LIC Authorities for allowing him to resume his duties but so far he has not been allowed to resume his duties.

That it is clear that the removal of the workman is nothing else but pure and simple retrenchment and also no compliance of requirements of section 25(F) of the ID Act, 1947 have been done by the LIC Management and thus, this, removal from the service of the workman is bad in law.

The management has filed written statement. In their written statement, it has been stated that the workman submitted his resignation on 10-3-1989 and the same was duly accepted by the competent authority w.e.f. 10-4-1989 after the completion of the thirty days notice period. The question of allowing him to join his duty after acceptance of his resignation does not arise at all. It is added that the resignation was duly tendered by the workman and was duly accepted by the competent authority the communication of which was made to the workman concerned. The consideration of any resignation was out of question.

It has been stated that the workman is not entitled to any reinstatement as stated in his plaint and as such to any back wages or damages or interest. He is also not entitled to any relief as to cost.

The workman has filed rejoinder. In his rejoinder, it has been stated that it is a pure and simple act of the removal of the workman from his job and it was necessary on the part of the LIC management to comply with the requirements of the Section 25(F) of the ID Act, 1947, thus bad on law.

Heard arguments from both the sides and peruse the papers on records. It was argued by the workman that he was not in a fit state of mind. He has got some mental ailment and he was frustrated. his family circumstance were not good. So, he wrote resignation letter without applying his mind and thereafter he wanted to withdraw the said resignation letter but that was accepted. It was further argued by the learned counsel of the workman that a resignation letter must be addressed to the appointing authority and it must be accepted by the appointing authority. In the present case, it has not been addressed to the competent authority M-I and M-II are the resignation letters. M-II is typed whereas M-I is in the handwriting of the workman applicant. The workman applicant has addressed his letter to the Senior manager and there is no forwarding note of the Sr. Branch Manager as to how it reached the competent authority. The resignation letter M-II has been given under protest. In resignation letter M-I it has been written that the air of the branch does not suit me so I have sent the resignation letter. In both the resignation letter, some ground is mentioned. The learned counsel for the workman argued that the resignation letters are not pure and simple and it has been given by the applicant workman when he was not mentally fit.

In 1988(2) ATLT(CAT) it has been held that the resignation letter should be accepted only when it is clear explicit, unambiguous, unequivocal and unconditional in terms. The resignation letter should not be deemed voluntarily but the workman applicant has written it being tired of his life, his family circumstances and frustration. The employee who has worked for more than 25 years why he would resign until there are compelling circumstances as he would be deprived of all the benefits that may accrued to him.

That if the Government Servant addressed the resignation letter to the authority other than the appointing authority resignation would *ab initio* be void. In this case also, AIR 1969-SC, PAGE 180 has been referred. From the above discussion, it becomes quite clear that resignation letter should be addressed to the appointing authroity and it should be accepted by the appointing authority only then it can be said that the resignation letter has been validly accepted. In the present case, the resignation letter has been addressed to Senior Branch Manager who is not the competent authority. Senior Branch Manager was certainly not appointing authority so the letter addressed to him is not a valid resignation letter and if the resignation letter is *void ab initio*, its acceptance will have no effect. It has been further argued that the branch Manager did not forward the letter dt. 8th March, 1989 as it was given under protest and the resignation letter of 10th March was also not explicit and voluntarily as such, the resignation letter should be declared *void ab initio.*

It was submitted from the side of the management that resignation letter is valid. The workman has addressed it to Sr. Branch Manager. Sr. Branch Manager has forwarded it to the competent authority and the competent authority has accepted it.

It has been submitted by the management that the workman was in a fit state of mind and he wrote resignation letter voluntarily. It is explicit so it has been accepted by the competent authority. The resignation letter should be addressed to the appointing authority. In this case, it has not been addressed to the appointing authority. The resignation letter should be voluntary but one resignation letter has been given under protest and in other it has been specifically mentioned that the airs of the branch does not suit me so both the resignation letters cannot be said to be voluntary. There were some compelling circumstances under which both the resignations have been given.

My attention was drawn to 1988(2) SLJ CAT and 1989-ILLN-941(DB). The citations have been referred by the workman. After going through the citations, I am of the confirmed view that as per the contents of the resignation letter, both the resignation letters are *void ab initio* as they have not been addressed to the competent authority and they are not voluntary, as such the action of the management in accepting the resignation letter is not justified. Since the workman has expired during the pendency of the case, his heirs deserve to get every benefit as if the workman applicant has not resigned. He has not worked till his death so there is no question of back wages but his due leave should be considered and the other benefits by way of pension, gratuity which have not been paid till his date of death or date of retirement whichever is earlier should be paid to the heirs of the deceased workman applicant.

The award is replied thus :—

The action of the management of Life Insurance Corporaton in accepting the resignation of Shri Harish Chander Midha is not justified. The heirs of the workman are entitled to get all the benefits as if the resignation letter is *void ab initio* though they are not entitled to get back wages as the workman has not worked since the date of his resignation but he should get all the benefits which the other workman of his seniority are entitled to get. The heirs of the workman are also entitled to get the benefits. The resignation has not been validly accepted and it will be deemed to have no effect.

The award is given accordingly.

Dated : 20-04-2004.

R. N. RAI, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2004

का.आ. 1155.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकाता के पंचाट (संदर्भ संख्या 41/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-04-2004 को प्राप्त हुआ था।

[सं. एल-12011/181/2003-आई.आर. (बी-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 26th April, 2004

S.O. 1155.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 41/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the annexure, in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 26-04-2004.

[No. L-12011/181/2003-IR (B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 41 of 2003

PARTIES : Employers in relation to the management of Punjab National Bank

AND

Their workman.

PRESENT:

Mr. Justice Hrishikesh Banerji, Presiding Officer

APPEARANCE :

On behalf of the Management	:	Mr. S.C. Sadhak, Senior Manager, HRD Section of the Bank.
On behalf of Workmen.	:	Mr. D. Mukherjee, General Secretary of the Union.

State : West Bengal. Industry : Banking.

Dated, : 13th April, 2004.

AWARD

By order No. L-12011/181/2003-IR (B.II) dated 20-11-2003 the Central Govt. in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> "Whether the action of the management in not allowing arrear payment of officiating allowance in clerical cadre to Shri Murahu Pandey, Peon/Daftary in violation of Bank's circular No. 2/98 staff dated 12-2-1998 is justified and legal ? And if yes, what relief the workman is entitled to? And whether the workman is entitled for interest for not releasing the said payment by the management from the date the workman raised claim? If yes, what relief the workman is entitled to?"

2. When the case is called out today, representative of both the parties appear and file a joint petition duly signed by them stating that the matter has been settled between the parties and they pray for closing the present proceeding.

3. In the circumstance, present reference is disposed of by passing a "No Dispute" Award. The joint petition filed by the parties is made part of this Award as Annexure-A.

HRISHIKESH BANERJI, Presiding Officer

Dated, Kolkata,

The 13th April, 2004.

ANNEXURE-A

BEFORE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, KOLKATA

In the matter of
ID No. 41/2003

BETWEEN

Punjab National Bank
Through Zonal Manager, Kolkata—Employer

-vs-

General Secretary, PNB Employees Congress—Workmen

Most respectfully is submitted :—

— That a claim for arrear payment of Rs. 17749.82 (Rupees seventeen thousand seven hundred forty nine and paise eighty two only) being the officiating allowance for the period May, 1987 to August, 1993 in favour of workman Sri Murahu Pandey was filed by the above said union.

— that the management has settled by way of payment of officiating allowance of Rs. 17749.82 in favour of Sri Murahu Pandey in the month of December, 2003.

— that the workman concerned and the union representing him have no grievances in the matter.

— that the union prefers not to claim any interest for the delayed payment of the arrear.

In view of the above settlement, both the management and the union unanimously agree and pray before your honour to close the matter.

General Secretary (Dilip Mukherjee) For and on behalf of
PNB Employees' Congress (W.B.) Punjab National Bank

Punjab National Bank SRM Office, Kolkata-17
5, Clive Row Sd/-
Kolkata. Authorised Representative
Dated : 1-3-2004

Place : Kolkata

नई दिल्ली, 26 अप्रैल, 2004

का. आ. 1156.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ,एल. आई. सी. आफ. इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकाता के पंचाट (संदर्भ संख्या 1/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-04-2004 को प्राप्त हुआ था।

[सं. एल-17011/12/99-आई.आर. (बी-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 26th April, 2004

S.O. 1156 —In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1/ 2000) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the annexure, in the Industrial Dispute between the employers in relation to the management of L.I.C. of India and their workman, which was received by the Central Government on 26-04-2004.

[No. L-17011/12/99-IR (B-II)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 1 of 2000

PARTIES : Employers in relation to the management of Life Insurance Corporation of India

AND

Their workman.

PRESENT :

MR. Justice Hrishikesh Banerji, Presiding Officer

APPEARANCE :

On behalf of the : Mr. A. Biswas, Assistant
Management : Administrative Officer of the LICI.
On behalf of : Mr. R.N. Gun, Vice President
Workmen : of the Union and Mr. D.P.
: Chakraborty.

State : West Bengal. Industry : Life Insurance.
Dated : 13th April, 2004.

AWARD

By order No. L-17011/12/99-IR (B.II) dated 23rd December, 1999, the Central Government in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 1947 Act in short) referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of LICI *i.e.* Divisional Manager, LICI, Jalpaiguri in not absorbing 30 workmen as per attached list is just and fair, If not, what relief the concerned workmen are entitled?"

1. Subho Shankar Hore
2. Subrata Chakraborty
3. Prabin Kumar Sen
4. Nirapada Mohanta
5. Gunus Kujur
6. Gayanta Bhowmick
7. Debasis Moitra
8. Ajit Bagchi
9. Monoranjan Roy

10. Subir Dutta
11. Tapan Acharyee
12. Bindu Barman
13. Prem Hari Roy
14. Nibaran Chandra Das
15. Abdul Kalam Azad
16. Shyamal Sarkar
17. Subhra Saha
18. Chandra Majumder
19. Ajay Das
20. Ratan Roy
21. Sushil Kumar Saha
22. Madhab Talapatra
23. Sukanta Saha
24. Debasis Sarkar
25. Ashoke Baral
26. Ganesh Shill
27. Ajit Kumar Dutta
28. Kartick Singh
29. Dibabrata Dutta
30. Nirmal Hazra

2. 30 workmen namend above represented by the Life Insurancee Employees' Association pray for their absorption in the LICI. It is stated by the Union that these workmen are working in different branches of LICI in Jalpaiguri Division. They were engaged against regular vacancies in the peon's cadre for years together. By rendering duties of peons these badli workmen had preferential claims for engagement as regular peons as they conform to the requirement of necessary educational qualifications for appointment as Peons in LICI. Their engagement in most cases started from the begining of 1990. In some cases, however, such engagement dated back to 1986 and 1989. Most of them have crossed the prescribed age limit and as such they could not even apply for direct recruitment or to claim for their absorption in LICI. As badli peons they perform all the duties of regular peons. They carry cash to Banks and also keep office keys with them. They were however paid wages on monthly basis calculated on the basis of 26 days work in a month at the minimum of the scale with all allowances applicable to class-IV (Peon) Employees. In some braches they were paid ex-gratia in lieu of bonus as applicable to regular peons. It is further stated by the union that they come within the definition of 'workman' as provided in the 1947 Act. The management instead of providing regular jobs to these workmen, recruited 69 Peons from the open market rejecting their claim for absorption as Peons. Thus, it is stated by the union that the management has resorted to unfair labour practice. It is also stated that with the recruitment of 69 Peons from outside and posting them in different branches of LICI, the existing badli Peons have evidently suffered as their engagement has become infrequent. In some cases the number of days they work in a month fall even below 10 days. It iss alleged by the union that the concerned workmen engaged year after year and month after month and that they had worked for more than 240 days in "consecutive years".

3. The management in its written states that the concerned employees are not badli workmen and as such their claim is not maintainable. It is stated that they were engaged purely as daily-waged labourers. All the daily-wagers were given opportunity of applying for recruitment in the year 1998. Two of such daily-wagers got appointment as they were successful in the test and in the interview. Many of such daily-wagers failed and some application were rejected on account of various reasons.It is denied by the management that the workmen were engaged regularly till fresh recruitment in that cadre was held in late 1998. The workmen were engaged on daily wage basis as per the need of office without issuancce of any appointment letter by the competent authourity. Furthermore, it was not against any regular vacancies. It is stated that the recruitment in the Corporation is governed by specifc rules which have the force of law, namely, LIC Recruitment of Temporary Employees Instructions, 1993. It is stated that the engagement of the workmen was fully need-based and casual in nature and nothing prevented them to seek for employment outside. It is also denied that the workmen were engaged as badli peons and that they were carrying cash to Banks and were keeping office keys with them. No allowance applicable to Class-IV employees were paid to these daily rated workers. However, payment of bonus in few cases were wrongly done by some branches. Recovery process, however, was initiated and particulars of recovery were submitted. The management denies that the Corporation has resorted to unfair labour practice. It is stated that following the recruitment of 69 Peons, the need for more workmen was reduced. It is stated that in most of the cases although there was no need to engage these daily-rated workers, still they were being engaged by LIC on humanitarian ground. However, the rate paid for them is much more than what is to be paid as per statutes of other states. It is stated that their engagement was purely need-based and was varaying from 15 to 26 days per month and was not uninterrupted. The management states that the workmen are not entitled to any relief and that the reference is liable to be dismissed.

4. On behalf of the workmen Shri Debashis Sarkar has been examined as WW-1. In his deposition he states that he has been working in Kaliagunj Branch of LIC as a Daily-wage Peon since 1-2-1994. He does all the work as the regular Peon does. His duty hours are from 9.30 A.M. to 5.30 P.M. His record of attendance is maintained by the Administrative Officer. On the basis of that record wages are paid to them. He gets his payment once in a month. Till 1998 dearness allowance was paid with their wage, but it was discontinued afterwards. He says that two Peons joined their branch in the year 1995. At that time there were three Peons on daily wage basis. But of the Peons who

joined in 1998, one has got promotion. But, in his cross-examination he admits that he has not filed any document regarding promotion of one of the Peons joining in 1998. He says that in the absence of regular Peon the witness himself carries cash to the Bank also. This witness further says that they do not get wages for Sundays and National holidays. It is also stated by him that no leave register is maintained in respect of them in the branch. He states that in Siliguri Branch No. 1 the leave register of daily wage Peon is also maintained. In his cross-examination, the witness admits that he did not get any letter of appointment from LIC; that in the year 1998 he appeared in the recruitment test, but did not pass and that he gets his payment of wages on vouchers and that he does not get any salary sheet.

5. MW-1, Shri Hitendra Nath Roy Sarkar is the Administrative Officer of the LIC at Jalpaiguri Divisional Office. He states that when the workmen concemed were engaged in LIC vacancy did not exist and that presently also no vacancy is available. In 1998 the vacancies were declared and there was recruitment test for filling up those vacancies. Daily- wage earners were also allowed to appear in such test. One of the workmen got appointment as Watchman in Coochbihar Branch. After the recruitments were made on the basis of selection of 1998, the daily-wage earners were told that there would be no job left for them. Sone daily-wage workers were removed from Darjeeling Branch and an agitation followed and the Branch had to be closed for sometime. The daily-wage earners were thereafter allowed to continue their work after the normalcy was restored. This witness says that there is no rule concerning the regularisation of the daily-wage earners in the LIC Recruitments are made in the LIC as per the LIC Recruitment Instructions, 1993. This witness further states that engagement of daily-wage earners are need-based. There is no circular regarding calculation of the daily wage of the daily wage earners. These daily-wage earners have not worked against any leave vacancy. This witness further states that the claim of the union regarding regularisation of the daily-wage earners is not justified. In his cross-examination, he states that the recruitment could not be made for 10 years prior to 1998 inspite of vacancies due to retirement, promotion etc. The witness states that continues engagement was not required for seasonal and sudden rise in the load of work and that no rule permitted appointment or engagement of casual or daily-wage worker. The applications of some of the daily wage earners were rejected on various grounds and only 10 had appeared for the test, but they were declared "Not passed". Jitendra Nath Barman who was appointed as Watchman was not one of the 30 persons concemed under the present reference. He also stated that a separate reference is pending before this Tribunal regarding three persons of Darjeeling Branch and that case is similar to the case of the persons concerned in the present reference.

6. Although on behalf of the workman several documents have been produced and admitted into evidence, no oral evidence was adduced by the workman referring to any of those documents. Considering the evidence on record, this Tribunal is of the view that those documents do not make out the case of the workmen for their absorption in the Corporation.

7. On behalf of the union it is submitted that in response to the open market employment notice dated February 5, 1997 all the 30 workmen applied for regular recruitment, but only 13 were called for written test of Sepoys/Peons; that only one worker of Chachol Branch, by the name Shri Nibaran Chandra Das was declared qualified in the written test, but was disqualified at the interview; that about 20 out of 30 workmen appeared in the interview for the post of Watchman, but it is stated by the union that no recruitment test is required for the post of Watchman. It is further stated that the management has no scheme for regularisation of daily-wage workers engaged by the management year after year continuously.

8. In support of its claim the union has referred to the following Supreme Court decisions reported in AIR 1988 SC 519 and AIR 1998 SC 1477. Another decision cited on behalf of the union has not been correctly quoted and as such the said decision could not be found out. In the decision reported in AIR 1988 SC 519 the Hon'ble Supreme Court observed that there was no justification for the Delhi Municipal Corporation extracting the same amount of work from the workmen concerned on payment of daily wages at rates lower than the minimum salary which was being paid to other workmen recruited regularly even though the workmen involved in the case have been doing the same work for a number of years. Suitable directions were issued to the Corporation by the Apex Court in the said case. In the present case the workmen can be recruited only in terms of L.I.C.I. Recruitment (Of Class-III and Class-IV Staff) Instruction, 1993. The workmen himself in his cross-examination states that he appeared in the recruitment test, but did not succeed. It is found that no other workman even appeared in the recruitment test held by the L.I.C.I. In such circumstances, it cannot be said that the workmen have been illegally denied from getting permanent jobs. The decision reported in AIR 1988 SC 1474 at 1477 cited on behalf of the union is not at all applicable to the facts of the present case.

9. On behalf of the management the decision reported in AIR 1994 SC 2148 (L.I.C. of India v. Asha Ramchandra Ambekar & Anr.) has been cited. In the said decision it has been held that the Court cannot direct appointment to be made contrary to the statutory instructions like L.I.C.I. Recruitment (of class-III and Class-IV Staff), 1993.

A Division Bench of the Calcutta High Court in a decision in the case of Calcutta Tramways Co. (1978) Ltd. &Ors. v. Ramesh & 17 Ors., reported in 1999-II-LLJ-1173 held that an appointment to a permanent service must be made in terms of Recruitment Rules.

In the case of Nazira Begum Lashkar and Ors. v. state of Assam & Ors., reported in AIR 2001 SC 102 it has been held that appointments of Assistant Teachers in primary school under the provisions of Assam Elementary Education (Provincialisation) Rules (1977) were not made in accordance with the statutory rules and without any advertisement calling for applications and without constitution of any selection committee and any interview. Such appointments, it was held by the hon'ble Supreme Court would not confer any right on the appointee; nor could such appointee claim even any equitable relief from any Court.

In the case of Madhyamik Siksha Parishad, U P v. Anil Kumar Mishra & Ors., reported in AIR 1994 SC 1638=1994 Lab. I.C. 1197 it was held by the Apex Court that completion of 240 days' work by the workman cannot attribute status of casual workman to such workers working temporarily under State Government.

10. Accordingly, it is held that the action of the management of LICI in not absorbing the above 30 workmen in the Corporation is not unjustified and the workmen are not entitled to any relief.

HARISHIKESH BANERJI, Presiding Officer

Dated, Kolkata,
The 13th April, 2004.

नई दिल्ली, 26 अप्रैल, 2004

का. आ. 1157.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय नं.-1, नई दिल्ली के पंचाट (संदर्भ संख्या 31/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-04-2004 को प्राप्त हुआ था।

[सं. एल-12012/397/92-आई.आर. (बी-II)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 26th April, 2004

S.O. 1157.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (I4 of 1947), the Central Government hereby publishes the award (Ref. No. 31/93) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1, New Delhi as shown in the annexure, in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 26-04-2004.

[No. L-12012/397/92-IR (B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT NEW DELHI

Presiding Officer : Shri B.N. Pandey

I.D. NO. 31/93

Shri Ram Pal Sharma S/o Shri Lala Ram,
R/o Village Ganga Thala,
Ram Garhi, Distt. Bulandshehr,
U.P. Now at Delhi .....Workman

Versus

Up Maha Prabandhak, (Dy. General Manager),
Canara Bank,
Sapru Marg, Lucknow-226001 .....Management

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/397/92-I.R. B-II dated 19-3-93 has referred the following industrial dispute to this Tribunal for adjudication:-

"Whether the action of the management of Canara Bank in Considering the workman Sri Ram Pal Sharma sub-staff as voluntarily retired from services of the Bank w.e.f. 3-12-1988 on Account of his alleged absence from duty is legal and justified? If not to what relief the workman is entitled to?"

2. The workman has filed his statement of claim assailing the validity of the management's action in deeming him voluntarily retired from service of the bank w.e.f 3-12-1988 and praying to declare it a illegal and unjustified and his reinstatement in service with full back wages alongwith all other benefits. In the claim statement it has been *inter alia* alleged that the workman was employed as a class IV employee with the erstwhile Laxmi Commercial Bank which later on merged with the Canara Bank w.e.f 24-8-1985. That the workman was orginally appointed in 1976 at Aligarh on the post ot Peon/ Chowkidar but later on he was working at Bulandshahr in 1985. That he was transferred to Jaipur and again to Aligah and further back to Bulandshehr. That he became unwell while posted at Aligarh and Jaipur. Therefore he had to make request for his transfer to Bulandshahr branch. The request was accepted to and accordingly he was transferred and posted at Bulandshehre in 1984. That due to his sickness his condition aggravated in the shape of liver enlargement and other complications and hence he had to apply for medical leave which was sanctioned by Branch Manager Bulandshahr. However, his salary for a period of 4 months prior to August, 1985 was not paid and it is still due to him that his youngest daughter suffered from polio. He has five daughters and a son. Due to his family circumstances he had to take leave; that the management proceeded to issued a letter dated 20-9-1988 asking workman to report for duty within 30 days from the date of the letter with the threat that in its default workman shall be

deemed to have voluntarily retired. The workman submitted his report dated 2-11-1988 in compliance with the said letter dated 20-9-1988. He also asked for extension of leave for a period of 30 days and further requested for his transfer to Delhi Circle. The management instead of giving any reply to the letter of the workman proceeded to issue letter dated 7-12-1988 stating that the workman was being ordered to have retired w.e.f 3-12-1988 and that period from 25-5-1988 to 3-12-1988 was being treated as one without leave, that the workman represented against the said order and for withdrawal of the impugned order which was rejected vide letter dated 20-3-1989. His further representations were also ignored. Hence he raised an industrial dispute. Hence this reference. It was further alleged that the managment illegally drew the inference that the workman did not want to join duty; that the representations made by the workman in reply to the alleged notice of 30 days was not considered properly and the management proceeded to pass illegal order illegally and arbitrarily. Hence it deserves to be quashed and the workman deserves to be reinstated in services with full back wages and all other benefits.

3. The management filed its written statement contesting the claim of the workman. In the written statement it was *inter alia* alleged that the petitioner was very irregular in attendance. He remained absent from 14-11-1985 to 14-3-1988. His absence for the said period was treated unauthorised without leave application and hence on loss of pay. That he again absented from duty from 25-5-88 without giving any leave application and despite instructions of the branch to report for duties. He did not join duties. That the service conditions of the workman are governed by the Biparatite Settlement and as per provisions of the Bipartite Settlement it is open to the bank to treat employee/workman as having voluntarily retired. In case employee absents himself for period of 90 or more consequtive days without leave application and fails to report for duty within 30 days the period given to him; that the workman was unauthorisedly absent despite advising workman to report for duty. He did not report for duty. No leave application was submitted by the workman, no leave was granted to him by the bank; that instead of reporting to duty in response to the notice dated 20-09-1988 workman submitted a letter dated 2-11-1988. No satisfactory explanation for his unauthorised absence was given by the workman. He stood retired from the service of the bank w.e.f 3-12-1988. In terms of the provisions of the Bipartite Settlement that no representation as ever received except the letter dated 2-11-1988; that the action taken by the management was perfectly legal, justified and in accordance with the Bipartite Settlement. Hence it reserves no interference and the allegations made by the workman are baseless and deviod of merits. Hence the claim petition is liable to be dismissed and the workman is entitled to no relief.

4. In reply to the written statement workman also filed his rejoinder denying the allegations made in it and reiterating his earlier versions.

5. Both the parties in support of their claim adduced documentary as well as oral evidence through affidavit. The witnesses who filed affidavit were also cross-examined by the representative of the other side.

6. I have heard Id, representatives of both sides and perused the file.

7. Clause XVI of the IVth Bipartite Settlement deals with the provisions of voluntary cessation of employment by the employees. It provides that:—

> "Where an employee has not submitted any application for leave and absents himself from work for a period of 90 or more consequitive days or beyond any leave to his credit or absents himself for 90 or more consequtive days beyond the period of leave originally sanctioned or subsequently extended or where there is satisfactory evidence that he has taken up employment in India or the management is satisfied that he has no present intention to join duties, the Management may at any time thereafter give a notice to the employee last knwon address calling upon the employee to report for duty within 30 days of the notice stating *inter alia* the grounds for the management coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence whichever is available. Unless the employee reports for duty within 30 days or unless he give an explanation for his absence satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties the employee will be deemed to have voluntarily retired from the bank service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the banks right to take any action under the law or rules of service."

8. In the instant case the management has itself filed a copy of the alleged notice dated 20-9-1988 of 30 days to the workman the genuineness of it has been admitted by the A/R of the workman. It is worth to be mentioned that this notice does not bear signatures of any officer of the bank. The relevant place where it was to be signed by Senior Manager is lying vacant, therefore, it cannot be treated as a valid notice. In other words it is no notice in the eyes of law and it is merely a waste paper. In this notice it has been mentioned that your leave record shows a debit balance of 263 days of privilege. Your absence from 25-5-1988 is therefore being treated as unauthorised one without leave and hence on loss of pay; that you have not earned wages for 87 days from 24-8-1985 to 14-3-1988 and also since 25-5-1988 indicates

that you have taken up employment elsewhere. It is, therfore, presumed that you are no more interested in continuing your service in Bank. According to the provision of the above mentioned para XVI of the 4th Bipartite Settlement there must be satisfactory evidence that the employee has taken up employment in India or the Management is satisfied that he has no present intention of joining duties. In the instant case it was assumed that the workman had taken up employment elsewhere without any evidence at all to that effect. Moreover satisfaction of the management was also not recorded. It was merely presumed that he was no more interested in continuing his service in the bank. Moreover, it is admitted fact by the management that after receipt of the said notice the workman through his letter dated 2-11-1988 had requested the management of 30 days time to join the duties and he had also admitted in the same letter receipt of the notice dated 20-9-1988 or 3-10-1988. Thus his letter dated 2-11-1988 was well within 30 days through which he had clearly expressed his intention to report for duty. Therefore, it could not be presumed that he had no intention to join the duty. It is also an admitted fact that in the same letter dated 2-11-88 the workman had also requested the management to transfer him to Delhi Branch so that he may be in a position to provide better treatment of polio to his two children. He had also alleged in that letter dated 2-11-88 receipt of which has been admitted by the A/R of the management that he had not taken any employment elsewhere nor he was doing any business. The management has also admitted this fact that no reply of this letter dated 2-11-88 of the workman was given by the management. The bank treated the workman as valuntarily retired from service, from 3-12-88 vide its order dated 7-11-88. MW1 Shri P.K. Batra Manager of the management admitted in his cross-examination that no reply was given by the management to the workman in reply to his letter dated 2-11-88. On the other hand the workman Shri R.P. Sharma in his affidavit Ex. WW1/1 filed before this court specifically alleged that "I submitted my representation dated 2-11-88 in reply to the letter dated 20-9-88. I asked for extension of leave. I also requested for my transfer to Delhi Circle. No reply was given to my aforesaid letter dated 2-11-88." Further in Para 4 of the affidavit he deposed that "I never stated or expressed my intention not to join duty. The management was duly informed that my two children viz. daughters were suffering from polio. I had sought transfer to Delhi on that account so that my children could be treated at Delhi. "He futher deposed that" I reported for duty on 2-12-88 but I was not permitted to join stating that my representation dated 2-11-88 was still under consideration." Thus I find that there was no ground at all for the management to proceed against the workman in view of the provisions of para XVI of the Bipartite Settlement. There is nothing on the record to show that the workman had no intention to continue the service. There is also no evidence at all that the workman had taken up any employment elsewhere in India. Besides, even after the receipt of the 30 days notice he represented and sought for permission to join the duty. He also requested for his transfer on genuine grounds but his representation was not considered nor replied nor decided. The management of the bank ignoring the provisions of para XVI of the Bipartite Settlement wrongly and arbitrarily applied it against the workman deeming him voluntarily retired. Clause 16 of the settlement will apply only in cases of desertion i.e. where there is absence from duty without any intimation. If there is an intimation from the employee but the absence is unauthorised otherwise, bank should take action in terms of disciplinary procedure laid down in provisions of settlement and not in terms of clause XVI of the fourth Bipartite Settlement.

9. In view of the above discussions I find that the Bank wrongly presumed that the workman had taken up employment elsewhere or the workman had no intention to continue in service. The 30 days notice was also bad and illegal in absence of signature of the authority which allegedly gave the notice. Therefore, I hold that the action of the management of Canara Bank in deeming the workman Shri R.P. Sharma Sub-staff voluntarily retired from service of the bank w.e.f. 3-12-88 is illegal, against the provisions of law and wholly arbitrary. Hence, it cannot legally by justified. It deserves to be quashed and the workman is entitled to be reinstated in the service. However, in the facts and circumstances of the case I am of the view that he is entitled to 30% only of the back wages and continuity in service with all other consequential benefits. The parties shall bear their own costs. Award is given accordingly.

Dated: 19-4-2004. B.N. PANDEY, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2004

का. आ. 1158.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चौगुले एण्ड कं. लि० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.1, मुम्बई के पंचाट (संदर्भ संख्या 27/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-04-2004 को प्राप्त हुआ था।

[सं. एल-36012/1/96-आई.आर. (एम)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 26th April, 2004

S.O. 1158. —In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 27/96) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Mumbai as shown in the annexure, in the Industrial Dispute between the employers in relation to the management of Chowgule & Co. Ltd. and their workman, which was received by the Central Government on 26-04-2004.

[No. L-36012/1/96-IR (M)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

PRESENT:

Presiding Officer:

Shri Justice S.C. Pandey

REFERENCE NO. CGIT-27/1996

PARTIES : Employers in relation to the management of Chowgule & Co. Ltd.

AND

Their workman.

APPEARANCES :

For the Management : Mr. R.N. Shah, Advocate

For the Workman : Mr. V.A. Pai Advocate

State : : Maharashtra.

Mumbai, dated the 29th March, 2004

AWARD

1. This is a reference made by the Central Government under clause (d) of Sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 (the Act for short) for adjudicating and giving an award in respect of an industrial dispute between Chowgule and Company Ltd. Marmugoa, Harbour Goa (the company for short) and Shri. S.S. Naik (the workman for short) represented by Chowgule Employees Union (the Union for short). The terms of reference are as follows:

"Whether the action of the Managing Director, Chowgule and Company Ltd., Chowgule House, Mormugao Harbour in straight away discharging from services of Mr. S.S. Naik, Ex-Electrician Code No: 1937 as well as the General Secretary of the recognized Chowgule Employees Union w.e.f. 2-11-1995 is jutified valid and legal ? If not then, what benefits the workman is entitled to?"

The undisputed facts of this case are as follows:

The workman was serving the company as an electrician at (Code No. 1937) at Costi Purification Plant Coste, Goa. The workman was the General Secretary of the union at time of discharging him from service. It is not in dispute that the workman involved himself in Union activities since 1973. The company passed the following order dated 30-10-1995 discharging the workmen from the services of the company with effect from 2-11-1995. The order of discharge reads as under:

To

Mr. S.S. Naik, 30-10-1995
Electrician,
Code No. 1937
BNF Plant, Costi.

"Management regrets to note that on your instigation and instructions the workers of the Company at all its establishments have resorted to an illegal and wholly unjustified strike with effect from 17/10/1995.

As per the strike notice dated 26-8-1995, the Strike is called for:

(a) The dismissal of two workmen who are also office bearers and committee members of the Union.

(b) The disciplinary action pending against two workers for their alleged misconduct (assaulting an officer of the company and ransacking of Maina Mines Office of the Company).

(c) Failure to withdraw the application for closure of the Sirigao Yard after the Settlement dated 18-7-1995. Regarding the withdrawal of the closure application, you are aware that the authority under Chapter V-B of the L. D. Act has granted the permission and even the High Court has rejected the Union's writ petition basically because the Union and the workers of Sirigao Yard failed to honour the Settlement which was signed with a view to avoid the closure of Sirigao Yard, issue (b) is premature and as far as issue (a) is concerned, the Conciliation Officer has submitted his report to the Government.

The company has reasons to believe that the alleged issues on which the strike is called are merely camouflage and has been resorted to with ulterior motives.

Taking the entire work force of mining, engineering and ship building divisions of the Company and also of its Corporate Office at Mormugao Harbour on illegal and wholly unjustified strike is against the spirit and letter of the Settlement dated 10-11-1993. This illegal strike is resulting in substantial financial loss to the company.

Under the Settlement dated 10-11-1993 it is provided that in the overall interest of the organization the Union assured to improve the efficiency and the productivity and

eliminate such practices which hinders better efficiency and productivity.... with this goal in view they decided to develop a healthier employer-employee relationship and utilize the existing plant and machinery and manpower resources to their optimum capacity". But after the Settlement you have on flimsy grounds resorted to various agitations such as not allowing the mobility of workers from one point to another, continue with all restrictive practices of work to rule, instigating frequent work stoppage at various establishments, blocking the III shift operations of Costi BNF Plant inspite of Management providing agreed manpower around that 2 Wheel-loader-Operators are required for night shift working (a new demand) insisting on availability of laboratory facilities round the clock etc. resulting in III shift not yet getting started leading to frequest disruptions of the work in various establishments thus causing immense financial loss to the company. Under the Settlement dated 30-12-1989 which was signed after a prolonged strike of six months, you had agreed to withdraw the demand of abolition of the contract system. Despite this, during the last six years the Union under your leadership has not allowed smooth operation of the Contract System at the Loutlim Shipyard and other establishments of the company. Even your opposition to Contract wotking at Podou and consequential continued non-co-operation is contrary to the letters and spirit of the above mentioned Settlements. Inspite of the Company's assurance to the Union under your leadreship that the contract working will not effect the existing workforce of the company, You have on flimsy ground incited and instigated the workmen to frequently disrupt the work of the establishments.

All the above irresponsible acts of the union under your leadership show that you have scant regard for the Settlements signed by the Union and have resorted to breaches of the Settlements even before the ink on the document is dry.

All the above acts of Union under your leadership has made the Management to come to the conclusion that you are working against the interest of the company and that your actions do not constitute legitimate trade union activities.

Management is therefore satisfied that in the larger interest of the Company and all its workers, it is not in its interest to continue in its service and that it cannot repose any confidence in you. You are therefore, discharged from the services of the company with effect from 2nd November, 1995. This is without prejudice to the Company's rights to take any other proceedings against you.

Although not entitled to by way of abundant caution we are enclosing a cheque of Rs. 82,705.17 being one month's salary of Rs. 4,664.50 in lieu of notice and retrenchment compensation of Rs. 78,040.67.

Your other dues, if any, will be sent to you in due course.

You may if you desire prefer an appeal against this discharge order to the Chairman of the Company.

MANAGING DIRECTOR

It is also not in dispute before this tribunal that during pendency of this reference the workmen had reached the age of superannuation and would have retired had been not discharged by the company.

2. Since the order/letter dated 30-10-1995 is self explanatory, it is not necessary to give the pleadings of Union in great details. Only the minimum facts are being stated for the sake of brevity. It stated by the Union that the workman was a leader of Union. He successfully negotiated and signed six settlements. The workmen of Bimbal Mines of Em Co. Goa was operated by the company. The workers of the aforesaid mines wanted to accept the workman as their leader. The workman involved himself in helping these workmen. Ultimately, the dispute of Bimbal Mines workers was referred to CGIT No. 1 by the Central Govt. in year 1996. Consequently, the order dated 30-10-1995 discharging the workman was passed. The workman was not charged with any misconduct as an electrician. He discharged in connection with his legitimate activities as a Union worker. Therefore, the workman raised an industrial dispute. The company received notice from the Conciliation Officer. It did not participate. Therefore, a failure of conciliation was reported by him. That is how the matter was referred to this tribunal. The Union prayed that the workman be reinstated with full wages. It was pleaded inter alia that the order dated 30-10-95 was bad and mala fide. It was a colourable exercise of power.

3. The company filed a long written statement alleging that the workman was a stormy petrel of the union. He had taken part in 9 strikes and was a prime mover of these strikes. It has stated that all these strikes were violent in nature. The written statement gives the details of strikes. It is not necessary to burden the narration of those facts as it is not disputed by the workman had taken part in various strikes. There is another reason for not doing so. The workman was discharged by a speaking order which gives reasons for the discharge of the workman. It is well established that the best evidence is the contents of the document itself. The case of company was that it was entitled to discharge the workman for the reasons given in the letter dated 30-10-95. It was due to loss of confidence that workman discharged. The order was not mala fide. It was not colourable exercise of power. It was not punitive in nature and therefore, no enquiry was called for. There was prayer for rejection of the reference.

4. In support of his statement of claim the workman examined himself and closed his case. The company examines Shri. D.P. Sinha and closed its case.

5. The basic question is if the letter dated 19-2-95 addressed to the workman discharging him from service amounted to colourable exercise power. In other words it was mala fide. If this tribunal comes to the conclusion that

the order dated 30-10-1995 was malafide then question if it was punitive need not be considered. It may be noticed that case of the company was that the order of discharge was not punitive in nature. The company had discharged him because as a Union leader he was a hindrance in running the affairs of the company. His work as an Electrician was not questioned. The evidence of Shri.D.P.Sinha shows that all the strikes except the last one ended in settlements. Therefore, conduct of the workman merged in the settlements. It would be difficult to hold those strikes to be illegal in these collateral proceedings when the company itself condoned the illegality if any, by entering into settlement. In the case of last strike, it is clear from the affidavit that the strike was with effect from 17-10-95 on the three issues mentioned in paragraph 6 of the affidavit. The Issue No.1 was referred to the tribunal by the Conciliation and it culminated in a reference. The issue No.2 resulted in failure of conciliation but the Central Govemment declined to refer the matter on the ground the matter was premature. The third was regarding the closure for which the Authority under chapter(V) B had not granted permission. It was stated by the witness the strike was ultimately withdrawn on 15-2-1995. Shri.Naik naturally denied that order dated 30-10-1995 was a valid order. He stated that it was related to his union activities as member, as a Secretary. The workman did not deny that six strikes took place. When cross examined he stated he was President of the Union from 1977 to 1981. He stated in cross examination that President of the General Secretary in the trade union have great responsibility. It was stated by him that in a trade union the decisions are taken democratically and no single person can be held liable. It is also stated by him that in all six cases the executive of the Union had decided on the question of strike and general body had ratified it before going to strike. He denied that he was the sole person responsible for calling the strike of 1995. He denied that he was instrumental in instigating the strike. He asserted that company had passed the order dated 30-10-95 to create panic. The workmen stated that he was discharged because the workmen from Bimbal Mines began to join his union. He asserted that he could not be legitimately discharged for trade union activities.

6. The evidence on record shows that workman was not charged with any misconduct in his capacity as a Union leader. All that can be said in favour of the company that the aggressive approach of the workman hindered the workman of the company. Consequently, he in the opinion of the company was instigator of six strikes between 1973 to 1995. Therefore, company lost confidence in him. The company has filed the documents M1 to M15 in support of the stand taken by the company in its order of discharge and the written statement and oral evidence. The case of the company is not in any way furthered by making specific reference to documents or oral evidence in regard to other strikes. In fact the reasons for discharge are already given in the discharge letter dated 30-10-1995 and the company cannot go beyond them. This tribunal also cannot permit the company take a different stand at this stage. The company cannot be permitted to justify its stand by any subsequent events. The document M 14 shows that the workman was discharged for **"acts of the union under his leadership which were against the interest of the company and his actions did not constitute legitimate trade union activities".**

The question is could the company pick out and union leader or are office bearer for the activities of the Union. Is it not case of victimization? The trade union of the workmen is supposed to work on democratic principles. Mr.S.S.Naik has stated that decision to go on strike was taken by the executive of the Union. It was ratified by the general body could the workman be discharged for what was called by the company as illegitimate trade Union activities. It is obvious that as an individual the workman was entitled to persuade the Union to take a stand which was in the interests of the workmen. The workmen, could not be blamed for collective decision even if he was proved to be a fire brand as a union leader. Perhaps this was his legitimate field of action. For this reason above the entire order of discharge is vitiated. This tribunal finds that under section 2(ra) read with the Fifth schedule item 5 of the Part I it has been provided that it would be unfair labour practice on part of an employer to discharge or dismiss a workman—

(a) by way of victimization.

(b) Not in good faith but in colourable exercise of employer's rights.

It is also seen that section 25T of the Act prohibits unfair labour practice and section 25U provides a penalty for committing unfair labour practice. This tribunal is also aware that the Fifth schedule also prohibits in item No. 1 of Part II declares Unfair labour practice on the part of a workman and Trade unions of workmen if they advise or actively support instigate any strike deemed to be illegal under the Act. Again section 25 T and section 25 U of the Act come into play. Now there was specific provision under the Act for prosecution of the workman or the Union under the Act. This tribunal is of the view that activities mentioned in the order of discharge of the workman could not be held to be unfair labour practice because he was not prosecuted for the activities mentioned in the order dated 30-10-95. On the other hand, the company itself had committed unfair labour practice by discharging the workman by way of victimization and had not acted in good faith, but in colourable exercise of the employers rights. Although the order does not mention the facts pleaded by the company and the evidence led by it in point but on the pleading of the company. It appears that there were additional reasons behind the passing of the order dated 30-10-1995. From the pleadings and evidence led by the company it is clear that there were additional reasons for discharging the workman which was not stated in the order

dated 30-10-1995. These were kept secret from the workman cannot be accepted. Subsequent events cannot justify past action. Moreover, the subsequent event may is not open to one interpretation. The subsequent event may show that company has succeeded in the policy of divide rule. Thus, this argument is not acceptable. It is untenable. This tribunal has already held that is not open to this Tribunal to consider the acts of workman which were sought to proved by the company. However, even if this view of the Tribunal be incorrect then also the company does not get any benefit. The settlements entered into by the company has given to the activities of workman or the union a legitimacy which is being reproach. Therefore, these grounds could not be the foundation of the order dated 30-10-1995. In fact they were not in actuality. But they were the motive spring of the order dated 30-10-1995 because the company itself has taken the plea. Thus, the order dated 30-10-95 was, malafide. Even in case of the last strike there was no evidence that the workman had done illegitimate union activity. The calling of strike was the decision of the Union and the workman was the General Secretary. There is nothing on record to suggest that in this particular case the workman did anything special. On the other hand denied that he had instigated the strike in his evidence. No evidence of any individual act in respect of last strike was produced. There was no right vested in the company to consider the part played by the workman in strikes which culminated in successful settlements. Shri.D.P.Sinha agreed in cross examination that all the previous strikes ended in settlements. The workman was not prosecuted. The company cannot make legitimate trade union activity as illegitimate and then act upon. That shows the foundation of the order was malafide and colourable exercise of power. Let us consider the last strike. It was called off. There is no evidence lead before this tribunal for showing any special part played by the workman in the last strike. There could be no presumption in this regard. The workman had stated that the Union had taken the decision and the same was ratified by the entire body of the workmen. There is nothing on record to suggest by way of direct evidence to show that the workman had instigated the last strike. The argument of the company that no sooner the workman was discharged the strike failed has no merit. The word victimization in the context of this case would be that the workman was being discharged because of his legitimate trade Union activities. It could not be denied that as a General Secretary of the Union the workman could take part in meetings of the Union. He could discuss the matter in a meeting even if he took a militant attitude then the decision would that of Union. How could the workmen be picked out? The workman was picked up because the attitude of the company was vindictive against him. This fact is clear from the fact that the order of discharge gives reasons for its conclusion regarding the past activities of the workman as a Union leader. Apart from the fact that this was illegitimate, this consideration was done with a view to victimize him. It is clear that it would be unfair labour practice to discharge a workman by way of victimization. The word victimization has not been defined in the Act. It may bear different meaning in different context but in the context of item No. 5 (a) of Fifth schedule of the Act, it means a victim if unfair and arbitrary action. The workman was treated unfairly and arbitrarily because the management of the company did not like his activities an office bearer of the Union. There was no reason to mention those action which resulted in settlements. However, the management bore grudge against the workman and its mind set was revealed. As to the last strike no evidence was led how the workman could be held responsible for action of the Union. There is no evidence that workman individually instigated any illegal strike. The collective action of the Union cannot be isolated. The workman had stated in cross examination that the action was taken democratically. Obviously, it was done by majority vote. The workman's opinion is not known. There was no cross examination about his opinion in the Union meeting. He could have dissented. There is another reason for holding the order dated 30-10-95 had because even if the order of discharge could be held to be valid by any stretch imagination in respect of best strike, it was not sole reason for discharge. Other reasons were his past activities as an office bearer. However, as earlier pointed out that due to successful examination of these activities in settlements, those reasons were illegal. It is difficult to separate illegal reason from the legal reason for supporting the order at this stage. This Tribunal cannot say what would be the result if the management of the employee were asked to restrict to last strike. For this reasons the order dated 30-10-1995 read as whole is illegal and malafide.

7. The next question that has to be answered is the workman can be given the relief in this award itself. It is not the case of the company that the workman was discharged for any misconduct. Moreover, this tribunal has found as a matter of fact that discharge of the workman could not be for any misconduct. It has also been found that the order dated 30-10-95 is not in good faith and a colourable exercise of power of discharge conferred upon the company to discharge a workman in extra ordinary circumstances for loss of confidence. A mere pretence or a colourable exercise of power in bad faith cannot be ratified by this tribunal for the reason bad faith remains bad faith and a pretence remains a pretence. The order is bad coin carved out of a base metal. It cannot be transmuted into gold even by this tribunal. This tribunal cannot proceed further to hold an enquiry on the grounds on which the company could not have held a valid domestic enquiry. The prayer for justification of charges before this tribunal is rejected on the ground that the case of the company itself is that he did not terminate the services of workman on the ground that he committed a misconduct. This tribunal has refrained from commenting on the documents filed by the company on the ground that company could not have terminated

the services of workman as it did not act in good faith. Once the aforesaid conclusion is drawn then there is no scope for demand of an enquiry before this tribunal. The conclusion of this tribunal is that the grounds given in Exhibit-M 14 and those pleaded by the company could not be a subject matter of enquiry against the workman. It would breach the principle of collective bargaining if an individual is picked up and victimized for collective action.

8. This tribunal is of the view that order/letter dated 30-10-95 discharging the workman from 2-11-95 is bad in law. He should therefore, be reinstated in service from 2-11-95. It is further held that workman was be entitled to hold the post of Electrician from 2-11-1995 and shall be deemed to have continued service till he reached the age of superannuation in the year 1999 The workman shall be given the arrears of back wages from 2-11-95. He shall also be given all consequential benefits that arise from award including promotion, if any. After the date of the superannuation the workman shall be given all normal retiral benefits as if he was on duty till his retirement. There shall be no order as to costs.

S. C. PANDEY, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2004

का० आ० 1159.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 17/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-4-2004 को प्राप्त हुआ था।

[सं० एल-12012/373/95-आई०आर० (बी-II)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 26th April, 2004

S.O. 1159.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 17/97) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, New Delhi as shown in the annexure, in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 26-04-2004.

[No. L-12012/373/95-IR (B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, RAJENDRA BHAWAN, GROUND FLOOR, RAJENDRA PLACE, NEW DELHI

I.D. No. 17/97

Presiding Officer : R. N. Rai.

In the Matter of :—

Hari Ram

Versus

Punjab National Bank

The Ministry of Labour by its letter No. L-12012/373/95-IR(B-2) Central Government dated 2-01-1997 has referred the following point for adjudication. The points runs as hereunder :—

> "Whether the action of the management of Punjab National Bank in rejecting the employment to Shri Hari Ram Son of Shri Saheb Ram on the ground that Shri Saheb Ram had already ceased to be an employee of their bank and therefore, scheme of providing such job was not applicable to this case, was justified and legal. If not, what relief the workman and consequently his son is entitled to?"

The claimant has filed statement of claim. In his statement of claim the workman applicant was suffering from ailment and was having neurological attack and was under treatment of Rao Tula Memorial Hospital, New Delhi and Safdarjung Hospital as it would be seen from the prescription issued by the said hospital. As such he was not in a position to attend the office for some time and applied for leave from time to time.

The Manager of the bank was fully acquainted with the illness of Shri Saheb Ram. After prolonged illness, Shri Sahib Ram expired on 22-3-1993 vide his death certificate dt. 22-3-1993.

That the bank has a scheme of giving employment on compassionate grounds to the dependents of the Bank employee who die in harness or seek retirement on medical grounds subject to certain terms and conditions as provided in that scheme.

It has been submitted that Shri Sahib Ram died in harness while he was in service. Since no orders of treating him to have been voluntarily retired were conveyed to him by the bank, his wife, requested the bank i.e. the Regional Manager, South Region, New Delhi to provide job to her son Shri Hari Ram on compassionate ground knowing fully well that Shri Sahib Ram was deemed to have been voluntarily retired from Bank's services prior to his death, directed his wife to send her son Shri Hari Ram on 22-11-1993 for interview with all the relevant papers. The said interview was postponed. Shri Hari Ram was directed to attend the interview on 30-11-1993. Shri Hari Ram was interviewed by a panel of Banking experts. The bank informed Shri Hari Ram rejecting his request for giving him job on compassionate grounds, as the same was not in terms of Bank guidelines. The bank did not mention in their letter as to what are the guidelines or what was the

cause for not providing him services on compassionate grounds and what guidelines the said Shri Hari Ram had to fulfill. His father died in harness but it has been held by the management that he did not turn up despite several notices so his services were terminated and he was not the lawful employee of the bank when he died so no question of compassionate grounds arises.

The management has filed written statement. In the written statement, it has been asserted that according to the Vth Bipartite Settlement, if an employee absents from his duties for 90 or more days consecutively without submitting leave application, bank can voluntarily retire such employee after giving 30 days notice after having been satisfied that such employee has no intention to join duties. In the instant case, bank had issued a notice to Late Shri Saheb Ram in terms of the above provisions and since he did not report for duties within the stipulated time, he was treated to be voluntarily retired w.e.f. 2-2-1993. Thus, bank had no grounds to consider the case of Shri Hari Ram son of Late Shri Saheb Ram for appointment on compassionate grounds. The compassionate grounds is for those persons who died prior to retirement and during service. Since Shri Saheb Ram is deemed to have voluntarily retired from the bank service, there is no question of considerlng the case of his son on compassionate grounds in view of the para 19.16 of the Bipartite Settlement. Para 17 of the Bipartite Settlement clearly states that when an employee absents himself from work for a period of 90 or more consecutive days, without submitting any application for leave or its extention or without any leave to his credit or beyond the period of leave sanctioned originally/subsequently or when there is satisfactory evidence that he has taken up employment in India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of notice stating, inter alia, the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. The provisions of para 17 of the Bipartite Settlement and the application of his son Shri Hari Ram on 12-4-1993 for appointment on compassionate grounds could not be considered as his father voluntarily retired on 4-3-1993. In view of the circumstances, his application was rejected. It has been further submitted by the management that the case is not covered by 25(F) of the ID Act and Section 2(oo) of the ID Act as there is no relation of employee and employer in this case. Section 25(F) and the other sections of the ID Act are only applicable when there is relationship of employer and employee.

The applicant workman has filed rejoinder in his rejoinder, he has denied all the statements of the written statement and stated that his father was under serious illness and he died of illness so he did not report to duty. In such circumstances, it has been stated that the action for retiring the applicant's father from service may be set aside and it may be directed that the respondent should treat that the applicant's father died in harness while in service.

It was argued from the side of the workman that Shri Saheb Ram cannot be said to have rejected as he was not informed regarding his retirement. After his death, his son applied for service on compassionate grounds but the same was rejected without considering it.

The workman in his cross-examination has accepted that his father had once given him medical certificate and leave application to the bank but since I could not get or locate the bank's premises, so the letter given by my father could not be given to the bank and on the next date, I had sent through post. I had no knowledge of the letter dt. 2-6-1992 in which his father was asked to join. No letter dt. 2-2-1993 was received by us. It was further argued from the side of workman that Shri Saheb Ram should not be deemed to leave retired. He should be deemed to be in service when he died as he has applied for leave but no application is attached to the record. He was given notice in terms of Bipartite Settlement of para 17 but he did not report to duty. In such circumstances, the bank has the right to voluntarily retired the workman who does not report to duty in response to the 30 days notice.

My attention was drawn to 1999 LLJ 718 Orissa, the Hon'ble Court has held that after his continuous absence of 90 days advising him to report for duty within 30 days of the receipt of the notice failing which he will be deemed to have retired voluntarily from bank service. The dismissal is not perfect until it is served.

It was argued from the side of the workman that the letter of voluntarily retirement was not received before the death of the workman Saheb Ram.

It was argued from the side of the management that the industrial Tribunal has no jurisdiction in such matters as there is no employer and employee relation between the workman and the management. Really the workman in this case was not an employee of the bank. He has sought service on compassionate grounds but that was rejected so there was no employee and employer relation. e was neither casual worker nor daily rated work nor temporary employee so the provisions of the I ct are not applicable and the workman is not entitled t any relief and he cannot compel the management to appoint him. The action of the management is justified and legal.

The award is given thus :—

The action of the management of Punjab National Bank in rejecting the employment to Shri Hari Ram Son of Shri Saheb Ram on the ground that Shri Saheb Ram had already ceased to be an employee of their bank and therefore, scheme of providing such job was not applicable to this case, was justified and legal.

The applicant is entitled to get no relief.

The award is given accordingly.

Dated : 20-4-2004.

R. N. RAI, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2004

का. आ. 1160.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 26/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-4-2004 को प्राप्त हुआ था।

[सं. एल-12011/224/2001-आई आर (बी-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 26th April, 2004

S.O. 1160. —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 26/ 2002) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the annexure, in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 26-4-2004.

[No. L-12011/224/2001-IR (B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUATRIAL TRIBUNAL-CUM-LABOUR-COURT, CHENNAI

Friday, the 12th March, 2004

Present : K. Jayaraman,
Presiding Officer

INDUSTRIAL DISPUTE NO. 26/2002

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Syndicate Bank and their workman)

BETWEEN

The President, Syndicate Bank Employees Union, Chennai.	:	I Party/Workman

AND

The Deputy General Manager, Syndicate Bank, Zonal Office, Chennai.	:	II Party/ Management

APPEARANCE :

For the Workman	:	M/s. P. Manimeghalai & S. R. Gomathi, Advocates.
For the Management	:	M/s. T. S. Gopalan & Co. Advocates.

AWARD

The Central Government, Ministry of Labour vide Notification Order No. L-12011/224/2001-IR(B-II) dated 13-03-2002 has referred the following dispute to this Tribunal for adjudication :—

> "Whether the action of Syndicate Bank, Chennai is legal and justified in dismissing Sri V. Muthuchelvan, Ex-Clerk vide order dated 30-10-2000 from the services of the Bank ? If not, what relief the workman is entitled ?"

2. After the receipt of the reference, it was taken on file as I.D. No. 26/2002 and notices were issued to both the parties and both the parties entered appearance through their advocates and filed the Claim Statement and Counter Statement respectively.

3. The allegations in the Claim Statement of the Petitioner Union are briefly as follows :—

The concerned employee, whose cause the Petitioner Union espouses, Sri V. Muthuchelvan was working as Clerk-cum-Typist at A. Vellodu branch of the Respondent/ Bank. While he was working in that branch, a charge sheet dated 15-10-1999 was issued by which he was charged with gross misconduct of doing acts prejudicial to the interest of the bank. Even though, he has submitted his explanation to the charge sheet, it was not accepted by the Respondent/Bank and the management has decided to hold a departmental enquiry and appointed an Enquiry Officer. The management examined five witnesses and marked 30 documents during the enquiry. The Enquiry Officer has held that the charge framed against the concerned employee as proved. Subsequently, the punishment of dismissal from service of the bank was passed by the Disciplinary Authority on 30-10-2000 against the Petitioner. Even the appeal preferred by the Petitioner against the order of Disciplinary Authority was rejected by an order dated 24-01-2001. The Petitioner Union questioned the orders passed by the Disciplinary Authority and also the Appellate Authority on the following grounds :—

> The order passed by the Disciplinary Authority as well as Appellate Authority is biased, one side, perverse and is a result of total non-consideration of the case in a proper perspective. The Enquiry Officer has gravely erred in not taking into account the fact that charge sheeted employee was working as Respondent/Bank clerk pertaining to non-NRE customers and he has no connection

whatsoever to the cheques drawn by a fictitious person called Mr. P. Selvamony. Therefore, the charge sheeted employee cannot be held for the negligence and failure on the part of the supervisory officials. The management has not suspected or doubting the other staff of the branch only shows the biased mind of the Enquiry Officer and also the Disciplinary Authority. The expert has also given false evidence that the writings of the concerned employee deals with specimen signature on the disputed documents. Though it is admitted that the cheque books should be kept under lock and key at the control of supervisory staff, it is the mistake and gross negligence committed by supervisory staff by not doing so, Since the concerned employee is not custodian of it and also because he was under constant watch and seated just next to the supervisory staff, it cannot be said that concerned employee is responsible for the pilferage of cheque books. The concerned employee should not be made scapegoat for the pilferage of missing cheque books as an accusing finger can be pointed out to one and all. While it was admitted that the Management Ex. 5 to 13 which pertain to NRE Accounts was not handled by the charge sheeted employee either for the purpose of entering in leadger or for the purpose of delivery of cheque books as he was working as S. B. clerk petaining to non-NRE customers, it is clear that he has been falsely implicated and has been made a scapegoat for all the lapses committed and the negligence shown by the official and staff of the branch. All these aspects have been deliberately overlooked by the Enquiry Officer in his anxiety to give a favourable findings to the management. The Management exhibits 6,8,10 were obtained by coercion and false expert opinion was obtained and the charge sheeted employee was made a scapegoat for all the misdeeds of bank officials. The unreasonable and unjustifiable conclusion of the Enquiry Officer was very much evident by the biased and prejudiced view expressed by him in the findings. Therefore, the orders of the Disciplinary Authority and also Appellate Authority are illegal, arbitrary and therefore, the Petitioner Union prays that an award may be passed in the favour of the concerned employee.

4. As against this, the Respondent in its Counter Statement alleged that the concerned staff was working in Neyoor branch and the branch was having a good number of NRE customers. On 24-5-94 one Mrs. A. Maria Kamalias, a NRE customer having S. B. account No. 397 came to the branch disputing that a debit of Rs. 20,000/- covered by cheque No. U23 919456 dated 9-5-94, she claimed that when she was in possession of the cheque S. No. 919456 how such a cheque could have been issued. On a scrutiny it was found that the cheque book issued to the customer was having prefix N23 while the disputed cheque was having prefix U23. This gave rise to further doubts. There was a credit entry for Rs. 40,000/- on 9-5-94 by way of proceeds of a foreign demand draft. The foreign demand draft was missing from this slip bundle alongwith other 12 foreign demands drafts. When the cheque book stock register was referred, it was found that on 13-4-94 joint custodian had given 25 cheque books from U23 560501 to U23 560750 to Sri P. Ramanujam, Special Assistant, supervisor of the S. B. account section for day-to-day use. It also revealed that second half of page 42, 43, 44, first half of page 45, second half of page 48, first half of page 49 of cheque book issue register have been tom off and four cheque books bearing S. Nos. U23 560741 to U23 560750 were missing. On a detailed investigation, it came to light that the branch credited 13 NRE accounts on 9-5-94, 10-5-94 and 12-5-94 to the extent of Rs. 4,77,500/- on the basis of 13 Foreign demand drafts said to have been issued by the Musandam exchange, that withdrawals were made in six NRE accounts to the extent of Rs. 1,62,500/- on various dates 9-5-94, 10-5-94, 14-5-94 and 23-5-94 that the 13 Foreign demand drafts were not available in the respective date slip bundles that all the 13 credit entries pertaining to above referred 13 foreign demand drafts were fraudulent and equally withdrawals were made in fraudulent manner without the knowledge of the account holders. Further, out of the fraudulent withdrawals of Rs. 1,62,500/- from six NRE accounts through nine cheques three cheques were drawn in favour of P. Selvamony, a fictitious person for sums aggregating to Rs. 46,000/-. The signature appearing on the obverse of the said cheques as P. Selvamony was in the hand writing of the concerned staff. The cash was collected by his brother Mr. P. Pandiyarajan. The missing cheques were fraudulently encashed by P. Pandiarajan, the brother of the concerned staff. Further, the proceeds of all nine cheques were drawn by Mr. Pandiarajan and his associates. Therefore, on 15-10-1999 a charge sheet was issued to the concerned employee and on not satified with his explanation, a departmental enquiry was ordered and after the Enquiry Officer has given his findings that the charge framed against the concerned employee has been proved and after following the procedure, the dismissal order of the concerned staff was passed by the Disciplinary Authority. The dismissal of the concerned employee is valid in law and justified and the same should not be interfered with for any of the reasons urged by the Petitioner. The findings of the Enquiry Officer are supported by adequate evidence and the conclusion reached by him cannot be said to be perverse. Further, the Enquiry Officer referred to the seating arrangement of Neyyoor branch where the concerned employee was sitting next to the Special Assistant and he had access to the cheque books and therefore, he must have removed the

mission cheque books. He has given valid reasons for his conclusion that concerned staff must have had his hand in unauthorised removal of the missing cheque books. Since MW1 is a professional expert in examination of questioned documents, his opinion is entitled to due weightage. The Special Assistant who has vouched for the signature of the account holder in the disputed cheques was also subjected to disciplinary action and he was awarded with punishment. It is not as if the concerned staff alone was singled out for disciplinary action. The enquiry Officer has applied his mind to all the relevant meterials and has given due consideration to the concerned employee. Therefore, the dismissal of the concerned employee is justified and the same should not be interfered with for all or any of the reasons. The Respondent therefore, prays that the claim may be dismissed with costs.

5. Under these circumstances, the points for my consideration are—

(i) "Whether the action of the Respondent/ Management is legal and justified in dismissing Sri V. Muthuchelvan from the services of the bank?"

(ii) "To what relief the concerned employee Sri V. Muthuchelvan is entitled?"

Point No. 1 :

6. The case against the Petitioner in this case is on 24-5-94 one Mrs. A. Maria Kamalias, a NRE customer having S.B. account No. 397 came to the branch disputing that a debit of Rs. 20,000 covered by cheque No. U23 919456 dated 9-5-94, she clamimed that show she was in possession of the cheque S.No. 919456 how such a cheque could have been issued and on scrutiny, the bank authorities have found that the cheque book issued to the customer was having prefix N23 while the disputed cheque was having prefix U 23 and this gave rise to further doubts. On a detailed investigation, it came to light that the branch credited 13 NRE accounts on 9-5-94, 10-5-94 and 12-5-94 to the extent of Rs. 4,77,500 on the basis of 13 Foreign demand drafts said to have been issued by the Musandam exchange, that withdrawals were made in six NRE accounts to the extent of Rs. 1,62,500 on various date 9-5-94, 10-5-94, 14-5-94 and 23-5-94 and 13 foreign demand drafts were not available in the respective date slip bundles that all the 13 credit entries pertaining to above referred 13 foreign demand drafts fraudulent and equally withdrawals were made in fraudulent manner without the knowledge of the account holders and on further investigation, the fraudulent withdrawals of Rs. 1,62,500 from six NRE accounts through nine cheques three cheques were drawn in favour of P. selvamony, a fictitious person for sums aggregating to Rs. 46,000 and the signature verification and comparison by experts of forensic department, the signature appearing on the obverse of the said cheques as P. Selvamony was in the hand writing of the concerned staff. The cash was collected by his brother Mr. P. Pandiyarajan. The missing cheques were enchased by Mr. Pandiyarajan, brother of the concerned employee and the proceeds of nine cheques were drawn by Mr. P. Pandiyarajan and his associates. Therefore, the charge sheet was issued to concerned employee and after following the procedure in the domestic enquiry, the Enquiry Officer has held that the charge framed against the concerned employee has been proved and the Disciplinary Authority have imposed the punishment of dismissal from service and the appeal also was dismissed by the Appellate Authority.

7. On the Petitioner side, it is contended that the findings of the Enquiry Officer and the orders passed by the Disciplinary Authority and Appellate Authority are biased, one sided, perverse and as a result of total non-consideration of the case in a proper perspective.

8. For this, both sides have not examined any oral witness. But on the side of the Respondent documents namely Ex. M1 to M 12 were marked.

9. On behalf of the Petitioner, it is contended that the Enquiry Officer approached the case only with a pre-determined mind to support the management's version and thereby totally ignoring the various submissions of the defence and he further argued that in this case, the concerned employee was not working in NRE S.B. account section, on the other hand, he was working in non NRE section and therefore, it is not correct to say that the concerned employee is the sole person who is responsible for all the misdeeds, which was done by the officials of the bank. It is the evidence of the officer concerned namely MW4 Mr. Balachandran that the concerned employee was working only in non-NRE section and therefore, there cannot be any connection whatsoever to the cheques drawn by the fictitious person called Mr. P. Selvamony with the concerned employee. Further, the alleged fictitious cheques were passed by the competent officials by duly verifying the specimen signature of the account holder. Therefore, the primary reponsibility is cast on the supervisory staff to verify the correctness of the instrument and thereafter pass them for payment and in no way the concerned employee could be held for the negligence and failure on the part of the supervisory staff.

10. As against this, the learned counsel, for the Respondent argued that no doubt, the supervisory staff are there for verifying the signatures, but in this case, with a help of his brother, the concerned employee has forged the documents and it was clearly established by the forensic experts and document experts that the hand writing in the cheques are made by the concerned employee and therefore, it cannot be said that the concerned employee has no hand in the forgery and also stealthily removal of funds.

11. Against, the learned counsel for the Petitioner argued that the Enquiry Officer has not taken into account the fact that the missing of cheque books from the bank that too from the NRE section which is handled by a separate clerk and when the Special Assistant and also concerned clerical staff were not examined in the enquiry, it is clear that he has expressed his biased mind and accusing the concerned employee alone for the missing of NRE cheques. Further, the Enquiry Officer failed to take into account the fact with regard to the brother of the concerned employee and without examining the concerned person, he has come to the conclusion that the concerned employee's brother alone was responsible and he also come to the conclusion that the concerned employee only was removing the cheques and also dealing with the money in this case, and there is no proof that Mr. P. Pandiyarajan who was alleged to be the brother of concerned employee was responsible for the withdrawal of money from the bank to the tune of Rs. 1,62,500. Under such circumstances, with the vague inference, to be drawn from the circumstances the Enquiry Officer has come to the wrong conclusion. It is his further argument that expert opinion is not an absolute one and the expert namely Mr. N. Ravi, though he has stated that he has 17 years of experience in examining the questioned documents, he has falsely stated that the second capital letter 'S' as seen in A.511 tallies with specimen signature on documents S. 153 to S. 172. Even a common person by just taking a glance alone will be able to say clearly that both do not at all tally. But, this witness has stated that there is no difference and therefore, his finding is also perverse and under such circumstances, relying on the experts witness evidence, the Enquiry Officer has come to a wrong conclusion. Further, in this case, there is no clinching evidence to prove that pilferage of cheque books were done by the concerned employee. Under the such circumstances, it cannot be said that the concerned employee has got under dealing in this matter. It is also clear from the evidence of witnesses that supervisory staff only have committed a gross negligence and in such circumstances charging an innocent person is fatal to the case of the Respondent/Management. Further, it is his argument that while it is stated that the concerned employee was sitting next to the supervisory staff, it cannot be said that he had a chance of removing the NRE cheque books from the custody of supervisory staff. In this case, the concerned staff was not the custodian of the cheque books. Further, he was under constant watch and seated next to the supervisory staff. Under such circumstances, without examining the concerned supervisory staff or other staff who were dealing with NRE accounts, the conclusion arrived at by the Enquiry Officer is a wrong one. In this case, the Respondent/Management has relied on only on the experts opinion and came to the conclusion that the concerned employee has done all the misdeeds. Under such circumstances, no reliance can be placed on the enquiry report or the order of Disciplinary Authority.

12. As against this, the learned counsel for the Respondent argued that it is false to contend that the Enquiry Officer has not referred to the submissions made by the concerned employee. Further the Enquiry Officer in his findings referred to the seating arrangement of Neyoor branch of the Respondent/Bank where the concerned employee was sitting next to the Special Assistant and he had an access to the cheque books and therefore, he must have removed the missing cheque books and he has given valid reasons for his conclusion that the concerned employee must have had his hand in unauthorised removal of missing cheque books and under no stretch of imagination, it can be said that the finding is perverse, Further, MW1 namely Mr. Ravi, the management witness before that domestic enquiry, is a professional expert in examination of questioned documents and his opinion is entitled to due weightage. Further, the Govt. Document Examiner MW3 Mr. A.K. Singh has also stated with regard to the material documents and therefore, at this juncture their evidences cannot be disputed and nothing was shown against them to discredit their evidences. Further, it is false to allege that the concerned employee alone was taken into task. On the other hand, the Special Assistant, who had vouched for the signature of the accountholder in the disputed cheque was also subjected to disciplinary action and he was awarded with appropriate punishment. Under such circumstances, it cannot be said that the finding given by the Enquiry Officer is perverse or punitive in nature.

13. Again, the learned counsel for the Petitioner argued that in this case, neither the customer who has given a complaint orally nor the concerned Special Assistant or the other employee who was dealt with NRE account had been examined. Under such circumstances, it cannot be said that the management has established the case against the concerned employee. Under such circumstances, the finding of the Enquiry Officer lacks cogency and it is biased, perverse and one sided.

14. But, again on the side of the Respondent it is argued that in each and every case, it cannot be said that the customer who has given the complain must be examined before the enquiry and it is well settled that if the charge against the victim has been proved by other means, it cannot be said that the finding is vitiated by perversity. It is clearly established by material evidence that it is the concerned employee who has pilfered the NRE cheque books and with the connivance of his brother he has stealthily taken the amount of Rs. 46,000 from the NRE accountholders accounts and therefore, it is not open to the Petitioner Union to challenge this finding and the dismissal of the concerned staff is valid and justified and the same should not be interfered with for any of the reasons mentioned by the Petitioner Union.

15. I find much force in the contention of the learned counsel for the Respondent. Further, it is argued on behalf

of the Respondent that in order to cover up the unauthorised removal of cheque books, the concerned employee has also removed the folios in which the cheques were issued and this also points the conclusion that the concerned employee is the sole person who has removed the cheque books from the custody of the bank. No doubt, the officer or the Special Assistant who had vouched for the disputed signature of the accountholder was also responsible for the misdeeds. The part played by the concerned employee alone was active, pre-planned and deliberate and therefore, the part played by the concerned employee is greater than that of other employees. Under such circumstances, he cannot compare the misdeeds of other employees with his misdeeds. The misconduct shown in this case is grave and and the punishment given by the Disciplinary Authority is just and proper in this case.

16. Again, the learned counsel for the Petitioner argued that in this case, it is the evidence of the management that more than Rs. 1,62,500 has been stealthily taken away by the staff of the bank. But, on the other hand, in the enquiry, they have stated only Rs. 46,000 has been taken away from the bank by the concerned employee with the connivance of his brother. But, they have not stated any reasons with regard to remaining amount. Under such circumstances, it cannot be said that they have established the guilt against the concerned employee.

17. Here again, I find the argument of the learned counsel for the Petitioner has, no substance because, though more than Rs. 1,62,500 has been stealthily withdrawn from the bank, it is clearly established that Rs. 46,000 has been stealthily taken away by the concerned employee with the connivance of his brother. Under such circumstances, the charge framed against the concerned employee has been proved and therefore, the action taken by the Respondent/ Bank is legal and justified by dismissing the concerned employee from the services of the Respondent/Bank. As such, I find this point in affirmative.

Point No. 2 :

The next point to be decided in this case is to what relief he is entitled?

18. In view of my finding that the action of the Respondent/Syndicate Bank is dismissing the concerned employee Sri V. Muthuchelvan is legal and justified. I find the concerned employee is not entitled to any relief. Ordered accordingly. No Costs.

19. The reference is answered accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 12th March, 2004.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

On either side. None

Documents Marked :

For the I Party/Claimant : Nil

For the II Party/Management :

Ex. No.	Date	Description
M1	15-10-99	Xerox copy of the charge sheet.
M2	29-10-99	Xerox copy of the reply submitted by Sri V. Muthuchelvan To charges sheet.
M3	2-5-2000	Xerox copy of the enquiry proceedings.
M4 series (31)		Xerox copy of the exhibits marked in domestic enquiry.
M5	9-9-2000	Xerox copy of the Enquiry Officer's report.
M6	27-9-2000	Xerox copy of the comments submitted by concerned Employee for Enquiry Officer's report.
M7	5-10-2000	Xerox copy of the letter from Respondent to concerned Employee proposing punishment of dismissal from service.
M8	23-10-2000	Xerox copy of the minutes of personal hearing.
M9	30-10-2000	Xerox copy of the proceedings of Disciplinary Authority.
M10	22-11-2000	Xerox copy of the appeal preferred by Sri V. Muthuchelvan.
M11	26-12-2000	Xerox copy of the proceeding s of hearing before Appellate Authority.
M12	24-1-2001	Xerox copy of the iettrer from Respondent to Sri V. Muthuchelvan enclosing copy of proceedings of Appellate Authority.

नई दिल्ली, 26 अप्रैल, 2004

का. आ. 1161.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 27/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26 4-2004 को प्राप्त हुआ था।

[सं. एल-12011/204/2001-आई.आर. (बी-II)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 26th April, 2004

S.O. 1161 —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 27/2002) of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, Dhanbad as shown in the annexure, in the Industrial Dispute between the employers in relation to the management of UCO Bank and their workmen, which was received by the Central Government on 26-04-2004.

[No. L-12011/204/2001-IR (B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, DHANBAD

In the matter of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 27 of 2002

PARTIES : Employers in relation to the management of UCO Bank, Patna.

AND

Their Workmen.

Present : Shri B. Biswas,
Presiding Officer.

APPEARANCES :

For the Employers : Shri P.K. Chatterjee,
Senior Law Officer.

For the Workmen : Shri B. Prasad, State Secretary, UCO Bank Employees' Association.

State : Bihar Industry : Bank.

Dhanbad, the 17th March, 2004.

AWARD

By Order No. L-12011/204/2001-(IR-B-II) dated the 20th March, 2002 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of Sub-section (1) and Sec. 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

> "Whether the action of the management of UCO Bank, Patna in not regularising Shri Awadhesh Kumar, Peon, is justified? If not, what relief the workman is entitled to?"

2. The case of the concerned workman according to the written statement submitted by the sponsoring union on his behalf, in brief, is as follows :

The sponsoring union submitted that the concerned workman initially was appointed at Ekdanga branch of the Bank, P.S. Belchhi, Dist. Patna on 30-6-1985 to discharge his duties as peon. They submitted that at the relevant time there was no permanent peon posted in the said branch for which the concerned workman had to take up-all the works as a peon. Thereafter he was transferred to Barhiya branch, District Munger on 7-4-97. In the said branch also there was no permanent peon and for which he fully discharged his duties as peon so long he was posted there. From Barhiya branch the concerned workman again was transferred to Sono branch under Jamui District on 24-5-2001. Initially the management used to pay him wages at the rate of Rs.2/- per day which finally was enhanced to Rs. 124/- per day. They submitted that the concerned workman althrough was to remain in duty starting from 9.30 A.M. to 6 P.M. every day. They further submitted that the concerned workman in view of a settlement entered into between the management and the union dated 12-10-89 in the matter of regularisation of casual/daily rated workmen who worked for 240 days during the period from 12-10-86 to 12-10-89 submitted his representation to the management for his regularisation. They further submitted that while the concerned workman was posted at Ekdanga branch passed matriculation examination in 1993 and it was also within the knowledge of the management. It has been alleged that though the concerned workman continuously discharging his duty for long 17 years he has been deprived of getting any facility of provident fund, leave, medical leave, medical allowance, LFC, uniform etc. They further submitted that though the name of the concerned workman has been empanelled by the management till date the management did not consider necessary to issue any order of his regularisation as sub-staff. This silence on the part of the management not only is illegal but also arbitrary which has violated the principle of natural justice. Accordingly they raised an industrial dispute for conciliation before the A.L.C. (C) which ultimately resulted reference to this Tribunal for adjudication.

The sponsoring union accordingly submitted prayer to pass award directing the management to regularise the concerned workman w.e.f. 12-10-89 alongwith back wages and other consequential benefits.

3. The management, on the contrary, after filing written statement-cum-rejoinder have denied all the claims and allegation which the sponsoring union asserted in the written statement for and on behalf of the concerned workman. They submitted that the Bank since 1989-90 is continuously suffering loss and total accumulation of that loss upto 31-3-97 reached at Rs.1,63,991 lakhs. The low productivity of the employees and the operational loss incurred by the Bank had led the Bank for adoption of manpower planning by putting in restriction on recruitment in all cadres except on compassionate grounds and for identification of surplus and deficit pockets and ensuring optimum utilisation of manpower. They submitted further that the Reserve Bank of India had also reviewed the

performance of the Bank and had found that the Bank continued to show a loss in its working for 1993-94 and accordingly directed that there shall be no fresh recruitment even in respect of vacancies arising out of retirement, resignation, dismissals etc. the Banks financial position continued to be week in 1995-96 and there was net loss. In these circumstances the Reserve Bank of India directed to continue the restriction on fresh recruitment for the year 1996-97 also. The restrictions imposed by the Reserve Bank of India continued further as the financial position had not improved. In the year 1997 the then Hon'ble Minister of Finance, Govt. of India, had held a meeting with the Board of Directors of the Bank and representatives of the Unions/Associations of employees/officers of the Bank to find out ways to minimise the loss and improve the working condition of the Bank. Accordingly a Memorandum of Understanding was signed on 16-5-1997 between the Bank management and representative of various employees/officers of the Bank's three years revival plan wherein it was decided to aim at accelerated growth of business and also to economise expenditure which included embargo on fresh recruitment. They submitted that in view of the facts stated above they are not in a position to absorb the petitioner, who is an empanelled daily wage worker as a regular peon in the subordinate cadre. The management further submitted that a writ application being W.P.No. 1390/98 was filed before the Hon'ble High Court of Kolkata on behalf of All India UCO Bank employees Federation and the Joint Secretary of the Federation against the UCO Bank Management for issue of writ in nature of mandamus commanding the respondents (UCO Bank) to absorb in the vacancies of subordinate staff the daily wage workers already empanelled pursuant to the agreement dated 12-10-1989 entered into between UCO Bank Management and the unions. His Lordship of Hon'ble High Court, Kolkata disposed of the said writ petition vide order dated 4-8-1999 rejecting the claim of the union. They submitted that the grievance of the petitioner and the issue raised in the present reference is common with the issue raised in the writ application as mentioned above and for which in view of decision of the Hon'ble Court the claim of the petitioner cannot be accepted in the present circumstances. The management admited that vide Circular No.CHO/PAS/16/89 dated 19-10-1989 issued on the basis of the agreement dated 12-10-1989 only casual workers who were engaged and worked in subordinate cadre for a period of 240 days or more during the period of three years immediately preceding the settlement were eligible to be considered for empanelment as per procedure laid down. The persons empanelled could be considered for absorption subject to available vacancies and guidelines/instruction issued by the Govt. of India/Reserve Bank of India. They submitted that mere empanelment in the list does not give a right to absorption in the peon's cadre straightway. They disclosed that in view of the facts stated above the claim of the petition for his absorption in regular cadre of peon cannot be accepted at present in view of present financial position of the Bank, In the circumstances they submitted prayer to pass award rejecting the claim of the concerned workman.

Points to be decided:

4. "Whether the action of the management of UCO Bank, Patna in not regularising Shri Awadhesh Kumar, Peon is justified? If not, what relief the workman is entitled to?"

Finding with reasons :

5. It transpires from the record that the sponsoring union as well as the management in order to substantiate their respective claims examined one witness each. Considering the evidence of WW-1 and also considering the facts disclosed in the written statement submitted by the sponsoring union and also considering written statement submitted by the management I find no dispute to hold that the concerned workman was engaged as Peon on 30-6-1985 at Ekdanga Branch of the Bank. Thereafter by order of the management he was transferred to Barhiya branch on 7-4-97 and from that branch he was transferred to Sono branch on 24-5-2001 and is still working there. It transpires from the evidence of WW-1 that his working hour starts from 9.30 A.M. and ends at 6 P.M. every day and in discharging of his duties he performs all the jobs like regular subordinate staff. It is the allegation of the sponsoring union that inspite of rendering services from 30-6-85 the management did not consider necessary to regularise him as subordinate staff. They further submitted that the representation to that effect was given to the management but to no effect. It is further contention of the sponsoring union that during his posting at Ekdanga branch the concerned workman passed matriculation examination in 1993 and that very fact was within the knowledge of the management. Accordingly it is the contention of the sponsoring union that refusal to regularise the concerned workman as sub-staff was illegal, arbitrary and also violation of the principle of natural justice. On the contrary, from the submission of the management it transpires that since 1989-90 the Bank of the management is not only running at a loss but the Reserve Bank of India after reviewing the performance of the Bank directed the management not to recruit any workman even in respect of vacancy arising out of retirement, resignation, dismissal etc. till the financial position of the Bank is not stabled. They submitted that restriction imposed by the Reserve Bank of India continued further as the financial position had not improved. They further submitted that for accelerated growth of business of the management even Finance Minister, Govt. of India, entered into a discussion with the Board of Director of the Bank and representatives of the Union/Associations. Apart from all these facts it has been further submitted by the management that His

Lordship of Hon'ble High Court, Kolkata in disposing of writ petition W.P. No. 1390/98 rejected the claim of the sponsoring union for absorption of daily wage workers in the vacancy of sub-staff already empanelled in the list in different Banks in pursuance to the Agreement dated 12-10-89. They disclosed that as per Circular No. CHO/PAS/16/89 dated 19-10-89 issued on the basis of the Agreement between the Bank management and the union representative dated 12-10-89 only those casual workers who were engaged and worked in subordinate cadre for a period of 240 days or more during the period of three years immediately proceeding the settlement were eligible for being considered for employment as per procedure laid down. The persons empanelled could be considered for absorption subject to available vacancies and guidelines/instructions issued by the Govt. of India/ Reserve Bank of India. They disclosed that mere empanelment in the list does not ipso facto give any right for absorption in the peon cadre straightway in respect of casual workers. I have carefully considered the decision of the Hon'ble High Court, Kolkata. In disposing of the writ petition W.P. No. 1390/98 His Lordship observed clearly—"However, after considering such restrictions I am of the opinion that the respondent, Bank authorities should consider the case of the petitioner and shall absorb the rest of the casual workers as and when such restrictions are lifted by the Reserve Bank of India. I further direct the authorities not to fill up any post until these casual workers are being absorbed in the substantive post."

MW-1 in course of his evidence disclosed that though as per settlement in between the management and the unions a panel was prepared for daily rated workers for their absorption. They failed to materialise the Agreement as per restriction imposed by the Reserve Bank of India and also as it has been clearly observed by the Hon'ble Court that no such regularisation will be considered as per panel till the restriction subsists as per direction of the Reserve Bank of India. The representative of the management submitted that as per the decision of the Hon'ble High Court, Kolkata the Ministry of Labour also has refused to refer several cases before the Tribunal for adjudication. The writ petition and order issued by the Ministry in respect of refusal to refer the case for adjudication before the Tribunal during evidence of MW-1 were marked Exts. M-3, M-6 to M-8 respectively. MW-1 during his evidence disclosed that all recruitment of Bank employees at Bihar region are monitored, through Personnel Department. This witness disclosed that since his joining there as Chief Officer excepting recruitment on compassionate ground under Staff Welfare Scheme no regular recruitment either in the post of Clerk or Peon was made at Bihar Region during 2003. This witness has failed to disclose whether the ban imposed on recruitment of workmen has been lifted by the Reserve Bank of India or not. However, he admitted that their Bank earned a profit of Rs. 130 crore during the year 2001-2002. This admission on the part of MW-1 supports clearly that the management of Bank at present are not running at a loss. No cogent evidence is forthcoming whether the ban on recruitment imposed by the Reserve Bank of India has already been lifted or not. However, in the midst of hearing of this case on 11-9-2003 the representative of the concerned workman submitting a petitioner before this Tribunal disclosed that the management decided to absorb permanently 100 workmen as peons from the panel of the workmen. Accordingly the workman was asked to furnish caste certificate in view of Government guidelines for reservation of OBC category and the workman concerned accordingly submitted said certificate. The representative of the workman submitted that inspite of submitting that OBC certificate the management finalised the name of 23 candidates from Bihar and Jharkhand Regions for permanent absorption excluding the name of the concerned workman arbitrarily and illegally. I find corroboration of this fact considering a letter dated 23-6-2003 issued by the Chief Officer addressed to the Manager, UCO Bank, Sono branch. By the said letter the Manager, Sono branch was asked to forward SC/ST/OBC/ Physically Handicapped certificate of the concerned workman who has already been empanelled as casual worker, if he belonged to any of the category. By the same letter the Manager was further asked to send the said certificate to the Headquarter immediately. Non-receipt of caste certificate of the concerned workman was also communicated to the manager by the Chief Officer over telephone on date. It is clear from the annexed paper that the management empanelled the names of 23 workmen afresh for their absorption as subordinate staff who are mostly of OBC category. It is the contention of the representative of the concerned workman that inspite of furnishing OBC certificate to the Branch Manager, Sono branch for its onwards transmission to the Headquarter his case was not considered though the case of other workmen were considered. Not a singal scrap of paper is forthcoming on the part of the management to rebut the claim of the concerned workman in the matter of submission of caste certificate to the Branch Manager, Sono branch for his onwards transmission to Headquarter in view of letter dated 23-6-2003 issued by the Chief Officer of the management for consideration in the matter of his regularisation as subordinate staff. It is clear from the letter dated 23-6-2003 issued under the signature of Chief Officer that the management with a view to regularise the concerned workman as subordinate staff issued the said letter for taking necessary action by the Branch Manager, Sono branch. Therefore, there is reason to believe that embargo imposed upon the management by Reserve Bank of India has been lifted. Had that not been so the management would not call for the OBC certificate of the concerned workman through Branch Manager, Sono branch and also they would not prepare a fresh panel of 23 workers in that regard. It is clear that the concerned workman was in the category of Other Backward Class. The caste certificate which was

submitted in course of hearing shows clearly that the same were issued by 'PRAKHANDA VIKAS PADADHIKARI' dated 23-5-1993 and 'ZILADHIKARI' dated 1-9-2003. Until and unless the genuinity of these certificates is challenged there is no reason to dis-believe that the concerned workman was not of OBC category. It is seen that a fresh panel of 23 workers have been prepared by the management mostly on OBC certificates. No satisfactory explanation is forthcoming why the name of the concerned workman was excluded from that panel. It transpires further from the said panel that the name of other workmen have been included, who are in OBC group, and are junior to the concerned workman. No satisfactory explanation is forthcoming why the name of the concerned workman was excluded. Therefore, I find reason to hold that when the concerned workman is in OBC group his name ought to have been included in the panel considering the fact that he was senior to many other workmen whose names have been included therein. However, such inclusion of the name of the concerned workman, ipso facto, does not establish the right of his regularisation as subordinate staff in view of the decision of the Hon'ble Calcutta High Court referred to above.

6. In the result, the following award is rendered—

That the name of the concerned workman should be included in the panel of 23 workmen which has already been published, if genuinity of his caste certificate is established, within one month from the date of publication of this award. In view of the decision of the Hon'ble High Court, Calcutta, passed in connection with writ petition W.P. No. 1390/93 the concerned workman shall be regularised in the post of subordinate staff, if restriction imposed by the Reserve Bank of India is lifted.

B. BISWAS, Presiding Officer.

नई दिल्ली, 26 अप्रैल, 2004

का. आ. 1162.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स चोंगुले एण्ड कं. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय नं. 1, मुम्बई के पंचाट (संदर्भ संख्या 33/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-4-2004 को प्राप्त हुआ था।

[सं. एल-29012/6/2000-आई.आर. (एम)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 26th April, 2004

S.O. 1162.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 33/ 2000) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1, Mumbai as shown in the annexure, in the Industrial Dispute between the employers in relation to the management of M/s. Chowgule & Co. Ltd. and their workman, which was received by the Central Government on 26-04-2004.

[No. L-29012/6/2000-IR(M)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

PRESENT: Shri Justice S.C. Pandey, Presiding Officer

Reference No. CGIT-33/2000

PARTIES : Employers in relation to the management of M/s. Chowgule and Co. Ltd. Goa

AND

Their workman

APPEARANCES:

For the Management : Mr. R.N. Shah, Adv.

For the Workman : Mr. P. Gaonkar

State : Maharashtra

Mumbai, dated the 31st day of March, 2004

AWARD

1. This is a reference made by the Central Government under clause (d) of Sub-section 1 and Sub-section 2-A of Section 10 of the Industrial Disputes Act 1947 (the Act for Short). The terms of reference are as follows :

"Whether the action of the management of M/s. Chowgule and Co. Ltd. in prematurely retiring Shri Shrikant T. Pednekar, Labourer w.e.f. 30-6-1999 is legal and justified? If not, to what relief the workman is entitled?"

2. The United Mine Workers Union filed a Statement of Claim on behalf of Shrikant T. Pednekar (the workman for short) as follows. It was alleged that M/s. Chowgule and Company (the company for short) absorbed the workman in its services from 1-10-1993 as per letter dated 26-03-1994. The workman submitted a certificate issued by the Directorate of Planning, Statistics and Evaluation, Goa numbered as 553438. In that certificate his date of birth was shown to he 8-2-1948. The workman had submitted this certificate in June 1994. It was further submitted that in Mines Register the date of birth of workman was recorded as 8-2-1948. In the year 1996 the workman was asked to submit his school certificate. The workman replied that school was not in existence. It was alleged that thereafter the workman was asked to submit himself for physical examination. He submitted himself for physical examination by the company's doctor. He was asked to sign papers by the doctor and he signed the document written in English without understanding their contents. No further communication was made. Thereafter, when the

company wrote to the workman in its letter dated 13-11-1998, that he shall be retiring on 30-6-1999. The workman made representation dated 23-12-1998. The workman claimed that he could not be retired till 7-2-2006. He offered to submit himself before the Board of Directors of Medical College, Goa. However, the workman was illegally retired w.e.f. 1-7-1999 as per allegations in the Statement of claim.

3. The company in its written statement took the plea that certificate submitted by the workman in June 1994 showed the date of registration and issuance was 21-6-1994. Since the registration of date of birth was done on 21-6-1994, the company asked the workman to produce School Leaving Certificate by letter dated 3-7-1996 or any certificate registration not later than two years of birth. The workman showed his inability to produce the certificates. The workman was asked to submit himself to medical examination for determining his age. The workman accepted the direction of the company. The workman's age was determined to be 55 years on 25-11-95. Accordingly his date of birth was entered as 1-7-1941. Consequently, the workman was retired on 30-6-99.

4. On the aforesaid basic allegations the dispute between the parties is made. In this case it is not necessary to refer to parawise pleadings of the parties to this industrial dispute.

5. The workman filed his affidavit. He was cross examined on behalf of the company. The workman then closed his case. The company field two affidavits of Shri. D.P. Sinha. He cross examined on behalf of the workman. The company further examined Shri R.M. Nadkarni the doctor of the company. After the examination of these two witnesses the company closed its case.

6. The evidence on record shows that workman was given a letter absorption dated 21-3-1994. (Exhibit M1). Alongwith this document General terms and conditions of service was hailed over to the workman. As per condition No. 34 the workman was required to submit certain documents including the Certificate of Birth as per condition No. 34 (g)(ii). It is not in dispute that the workman submitted Exhibit M4. It is a birth certificate issued by the Directorate of Planning Statistics and Evaluation in Form (9) as per rule 9 framed under the Registration of Births and Death Act 1969. This certificate of Registration of birth was issued under section 17 of Registration of Births and Death Act 1969. In this certificate date of Birth of the workman is recorded as 8-2-1948. The issuance of this certificate was not in any way doubted by the company. The doubt was expressed by the company because it was registered on 21-6-1994. This certificate under rule 9 is to the effect in original record of the birth register of area the date of birth is recorded as 8-2-1948. This fact is confirmed by Exhibit W2. An entry in Register of Births and Deaths under the Registration of Births and Deaths Act has presumptive value as per section 35 of the Evidence Act. Therefore, merely because the entry was made on 21-6-1994, the company had no jurisdiction to question the entry made in the certificate unless the company had verified and found either the certificate was bogus or the entry was bogus. The company could not have asked the workman without any basis to submit the school certificate or entry made within two years of Birth. It must be noticed that Registration of Births and Deaths Act 1969 had came into force at Goa from 1st Jan 1971. The Act itself permits registration of Births after one year. All that is necessary is that it has done after due enquiry by a Magistrate of First Class or Presidency Magistrate. There is no reason to hold that this procedure was not followed. The company did not have any contrary facts at its command when the workman was asked to submit school certificate in the year 1996. The company could not have rejected the apparently valid certificate. Therefore, action of the company was void *abnitio*. It could not have asked the workman to submit to a medical examination with a view to nullify the certificate issued by the Registrar under Section 17 of the Registration of Births and Deaths Act 1969. Until and Unless there was reason to suspect that this document was a fraudulent document and was not issued by the Registrar of Births and Deaths the company could not have asked the workman to submit another certificate. The company has not taken this plea in the written statement therefore, it could not have filed the second affidavit regarding the enquiry of 2003. It appears that in order to justify its action the company through Mr. Sinha asked Mamhatder and Executive Magistrate as per letter dated 15-1-2003 to furnish information regarding the proceedings taken up. This letter is Exhibit M9. The reply dated 7-10-2003 stated that record of case was not available as it is weeded out. (Exhibit M 10). Even this reply does not show that the entry in the Register of Births and Deaths is false or procured. In fact the company asked the Executive Magistrate. This tribunal is of the view that the Exhibit M9 was not addressed to Magistrate First Class or Presidency Magistrate as required by Section 13(3) of the Registration of Births and Deaths Act 1969 read in the circular dated 27-6-71 issued by the Govt. of Goa Exhibit W3. Thus company totally failed to establish that it had valid reason to the entry dated 21-6-1994 regarding the fact that the workman was born on 8-2-1948 was false and concted. The cross examination of Mr. D.P. Sinha shows that age of the workman on 1-1-93 was marked as 45 years Exhibit W8. It appears that workman as Exhibit W7 was working from the year 1977. The document Exhibit W2 was produced along with the renunation form Ex. W6. It was also been proved that company was writing to the workman in English. There was no evidence that workman was explained M6 in Marathi or Konkani as per evidence of Mr. Sinha in cross examination. He admitted that between 1-1-1993 to 13-6-1996 no information was sent to the workman. As against this, the affidavit and evidence of the workman is plausible. He was illiterate man. He may not have understood the contents of letter regarding Medical. Moreover Dr. Nadkarni evidence is not all

convincing. How he could have determined the age of the workman by bare physical examination is beyond comprehension. In this case no Radiological examination for degree of ossification of bones was done. It is interesting to note that doctor was unable to say the exact nature of physical medical examination test that he had performed and the counsel for the company was required to introduce the evidence on this point by way of re-examination. Without going into technicality of the question, this tribunal can safely conclude that the type of tests performed by the doctor could not be determinative of the age of the workman. There could be a margin of error of 5 to 6 years. Therefore, there was no reason to suppose that date of birth given by workman was inherently nuprable. The company could not totally ignore the version of the workman and employ its own doctor to determine the age of the workman on the basis virtually non existent data for ensuring accuracy. Dr. Nadkarni himself did not vouch for accuracy. How could his word be taken as gospel truth. It has been argued that the workman had submitted to the medical test. It appears from the evidence of the workman had stated that he did not understand the under taking signed by him. He was not explained the contents of document. The workman did not understand English. He did not even sign in English. Therefore, nothing turns on Exhibit M9 or any other document that he signed. There is no question of estoppel. The company could have allowed the workman to submit himself before the Board of Doctors of Medical College or any other suitable institution having adequate equipment to determine the age. The workman received notice dated 13-11-98 Exhibit M7. He gave the first reply dated 07-12-98 Exhibit M8. He thus offered himself to be submitted by the Board of Doctor of Medical College. The workman was to retire in June 1999 and therefore, the company could have taken this offer. At that time there was no question of estoppel as the workman had done nothing to the detriment of the offer. It failed to take the offer. For all this reason too this tribunal is of the view that company did not act in good faith because it did not try to find out the true age of the workman.

7. For all these reasons recorded above this tribunal comes to the conclusion that company was not justified in retiring the workman w.e.f. 30-6-1999. It appears to this tribunal that there was no reason to question the recorded date of Birth of the workman as 8-2-48 because under section 13(6) of Registration of Births and Deaths Acts permitted registration of Birth after due enquiry if the entry is made even after a year of birth. No evidence was led for proving conclusively that such an enquiry was not done. The company did not take this plea. Moreover, company could justify the action taken by it in 1999 by fishing out evidence in the year 2003 as is clear from second affidavit of D.P. Sinha. Even so it has not proved that the Birth certificate submitted by the workman was bogus. The result is the retirement of the workman is bad. He shall be deemed to be in service. The case relied upon by the company Universal Cane Traders Pvt. Ltd. vs. Susheel Yeshwant Prabhu 2000 I CLR 131 does not show that certificate under the Registration of Births and Deaths Act 1969 was submitted. On the other hand the case of Sukhdev Shokha vs. Bombay Port Trust and other 1991 II LLJ 557 shows that physical medical test cannot be relied upon for determining age.

8. The reference is accordingly answered by stating that company retired Shrikant T. Pednekar prematurely on 30-6-99. He is entitled to continue in service till he reached the age of superannuation on the basis of registration of his birth as 8-2-48. He shall reach the age of superannuation on 7-2-2006. Then only he shall be deemed to have retired in normal course. The workman shall be accordingly deemed to be reinstated with full back wages and all the consequential benefits arising out of this award including right promotion if any.

S.C. PANDEY, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2004

का. आ. 1163.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुम्बई पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, मुम्बई के पंचाट (संदर्भ संख्या 30/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-4-2004 को प्राप्त हुआ था।

[सं. एल-31012/5/96-आई.आर. (एम)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 26th April, 2004

S.O. 1163.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 30/96) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1, Mumbai as shown in the annexure, in the Industrial Dispute between the employers in relation to the management of Mumbai Port Trust and their workman, which was received by the Central Government on 26-04-2004.

[No. L-31012/5/96-IR(M)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

PRESENT : SHRI JUSTICE S.C. PANDEY
Presiding Officer

REFERENCE NO. CGIT-30/1996

PARTIES : Employers in relation to the management of Mumbai Port Trust

AND

Their Workmen

APPEARANCES:

For the Management : Mr. M.B. Anchan, Adv.

For the Workman : Workman present in person.

State : Maharashtra

Mumbai, dated the 31st day of March, 2004

AWARD

1. This reference is made by the Central Government under clause 1(d) of Sub-section 1 and 2-A of Section 10 of the Industrial Disputes Act 1947 (the Act for Short) for resolving the industrial dispute between Shri K.G. Lawand (the workman for short) and the Mumbai Port Trust (the Trust for short). The terms of the dispute are as follows :

"Whether the action of the management of Mumbai Port Trust in dismissing Shri Kishan G. Law land w.e.f. 2-5-92 is justified? If not, to what relief the workman is entitled?"

2. It is not in dispute that the workman serving as a mazdoor with the Trust. He was issued a chargesheet dated 6-4-1991 whereby workman was charged with attempts to steal copper strip belonging to company on 15-9-1990 and 11-12-1990. The workman for commiting a misconduct under Regulation 3(1A) (V) for abetting conniving or committing theft under Bombay Port Trust Regulation. In the statement of claim it has not been disputed by the workman that he received the charge sheet. He stated that he replied to the chargesheet. It is not disputed that workman participated in the enquiry . Not only did he participate but he led evidence in defence according to Statement of claim. The only point that was raised in the Statement of claim was that there was no legal evidence and that the enquiry was bad because the workman was acquitted.

3. In the written statement it was stated that workman did not produce any evidence before the enquiry office that he was acquitted. It was stated that workman had not submitted any judgement of criminal court whereby he was acquitted. The letter of Deputy Superintendent did not show that the workman was acquitted. The workman was given detailed charge sheet. The enquiry was fairly conducted. The findings were based on evidence on record. The workman was rightly removed from service.

4. The workman had sought time for settling the dispute. The case was adjourned several times. It was fixed in Lok Adalat. The matter was not settled. Thereafter, Shri J. Sawant withdrew from the case. The workman filed an application that he be reinstated without back wages as a settlement of dispute. Thereafter, Shri J. Sawant withdrew from the case. The workman filed an application that he be reinstated without back wages as a settlement of dispute. Thereafter, the matter could not be settled. The workman was given several opportunities. The workman did not pursue the matter. He remained absent today. Therefore, the case was heard exparte. After considering the affidavit in support of case filed on 25-3-2004 and the enquiry proceedings placed on record. It is found that the trust had proved the case before the enquiry officer. There is no perversity attached to the findings. The workman participated in the enquiry. He does not say that principles of natural justice were violated. There is no judgement placed before this tribunal that workman acquitted. Accordingly, it is held that workman was rightly dismissed as charge of attempting to remain copper plate belonging to trust were proved. The order of dismissal 2-5-92 is justified. The workman is not entitled to any relief.

6. In view of the aforesaid conclusion, this tribunal holds that workman K.G. Lawand was rightly dismissed by order dated 2-5-92 and he is not entitled to any relief. Thus reference is answered on the aforesaid lines. No. costs.

S.C. PANDEY, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2004

का. आ. 1164.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मार्मागाँव हैंडलिंग एजेन्टस् एसोसिएशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, मुम्बई के पंचाट (संदर्भ संख्या 2/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-4-2004 को प्राप्त हुआ था।

[सं. एल-36011/9/99-आई.आर. (एम)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 26th April, 2004

S.O. 1164.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/ 2000) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1, Mumbai as shown in the annexure, in the Industrial Dispute between the employers in relation to the management of Marmugao handling Agents Association and their workman, which was received by the Central Government on 26-04-2004.

[No. L-36011/9/99-IR(M)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

PRESENT : Shri Justice S.C. Pandey Presiding Officer

Reference No. CGIT-02/2000

PARTIES : Employers in relation to the management of Mormugao Handling Agents Association

AND

Their Workmen

APPEARANCES :

For the Management : Ms. Shobha, Adv.
: Mr. Ambedkar, Adv.

For the Union : Mr. Gaonkar..

State : Maharashtra

Mumbai, dated the 31st day of March, 2004

AWARD

1. This is a reference is made by the Central Government under clause (d) of sub-section 91 and sub section (2A) of Section 10 of the Industrial Disputes Act 1947 (the Act for short) for resolving the dispute between Marmugao Handling Agent Association, Goa (The Association for short) and Minipur worker represented by the Marmugao Water front Workers Union. The terms of reference are as follow :

"Whether the action of the management of Mormugao Handling Agents Association, Goa in discontinuing the existing facility of leaves to Minipuor workers w.e.f. 1-1-1999 is justified? If not, to what relief the workmen are entitled?"

2. Both the parties are served. The employer has filed an application to the effect that it has been stated that Association was a society which has been dissolved. The President of the Society has been authorized to settle the money by resolution dated 26-7-1999. Accordingly, the President of Society has deposited the sole asset of the Society under section 13 of the Societies Registration Act 1860 in the Court District Judge South Goa in Civil Misc. Application No. 221 of 1999 and Reference No. 1 of 1999. A copy of order dated 27-10-1999 regarding the deposit of money is also placed on record.

3. Marmugao Water Fronts Workers Union has not entered appearance. It has chosen to remain ex parte.

4. However, an application has been filed by the Secretary, Gomantak Majdoor Sangh alleging that after conciliation the workers of the Second party Union have joined the Union and therefore, it should be permitted to be added as a party. This application is opposed by the Association.

5. Having heard the Association and the Secretary of Gomantak Mazdoor Sangh, this Tribunal is of the opinion that the application for adding the Gomantak Mazdoor Sangh cannot be granted. Admittedly, the Gomantak Mazdoor Sangh had not represented the workmen when the industrial dispute was raised before the Conciliation Officer. It was not a party. It is not the case of Gomantak Mazdoor Sangh that the workman of second party union have merged in that Union. The individual action of workmen joining the Gomantak Union would not clothe that Union to represent the workmen in this reference. This tribunal cannot enlarge the scope of dispute by adding a party which makes a vague allegation to the effect that most of the members of former union have joined the contesting Union. There is a possibility of inter se dispute between the two Unions. This cannot be subject matter of this reference.

6. This tribunal is further of the view that in view of the fact that Union representing the workmen in Conciliation is not appearing before the tribunal and facts placed by the Association on record no useful purpose shall be served by proceeding further with the reference.

7. Accordingly, this reference is answered by saying that owing to subsequent events the initial dispute does not survive for adjudication. The reference is rejected.

S. C. PANDEY, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2004

का. आ. 1165.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चेन्नई के पंचाट (संदर्भ संख्या 2/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-4-2004 को प्राप्त हुआ था।

[सं. एल-12012/112/2002-आई.आर.(बी.-II)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 26th April, 2004

S.O. 1165.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/ 2003) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the annexure, in the Industrial Dispute between the employers in relation to the management of Central Bank of Indla and their workman, which was received by the Central Government on 26-04-2004.

[No. L-12012/112/2002-IR(B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 16th March, 2004

PRESENT : K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE NO. 2/2003

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Central Bank of India and their workmen)

BETWEEN

Sri E. Kubendiran : I Party/Workman

AND

The Zonal Manager, Central Bank of India, Z.O. Chennai. : II Party/Management

APPEARANCES:

For the Workman : Mr. S.Vaidyanathan & M.Rajendran, Advocates.

For the Management : M/s T.S. Gopalan & Co. Advocates.

AWARD

The Cental Government, Ministry of Labour vide Notification Order No. L-12012/112/2002-IR (B-II) dated 29-11-2002 has referred the following dispute to this Tribunal for adjudication :—

"Whether the dismissal of Shri E.Kubendiran by the management of Cental Bank of India is legal and justified? If not what relief the workman is entitled to?"

2. After the receipt of the reference, it was taken on file as I.D. No. 2/2003 and notices were issued to both the parties and both the parties entered appearance through their advocates and filed the Claim Statement and Counter Statement respectively.

3. The allegations in the Claim Statement of the Petitioner are briefly as follows: —

The Petitioner joined the services of the Respondent as sub-staff in the Madras Region on 24-11-86. He was posted at Washermenpet branch and then transferred to Tiruvatiyur branch. While he was working there on 3-7-91, he was asked to meet the Regional Manager of the said bank at Mount Road along with his wife and as directed he met the Regional Manager. But to the Petitioner's surprise, inside the cabin, the Regional Manager, Assistant Regional Manager Mr. M. Ramachandran and some other officers of Regional Office coerced the Petitioner and his wife with a threat that Petitioner would be immediately dismissed from service and handed over to police, if he fail to write what they said and they alleged that while the Petitioner was working at Washermenpet branch, he misappropriated the bank's money to the tune of Rs. 23, 000/- by diverting the proceeds of demand drafts tendered by Saranya Agencies, Praburam Traders and Selvanayagar Traders and by diverting the proceeds to HSS account No. 5553 in the name one Mrs. Parvathi. Though the Petitioner refused to comply with their demand, he could not come out as he was immediately suspended and the officials intimated that Petitioner would be handed over to police, if he failed to give it in writing that he has misappropriated the funds of three demand drafts. When he approached the Regional Manager for revocation of his suspension, the Regional Manager asked the Petitioner to credit the amount of Rs. 23, 000/- to the sundry account at Tiruvottiyur branch so that they could make payment to the concerned beneficiaries of instruments involved in frauds. A charge memo was issued and again he met the Regional Manager, who in turn induced the Petitioner to remit a sum of Rs. 9, 300/- immediately and give an undertaking to remit the balance and thereafter the request for revocation of suspension would be considered. Believing his words, the Petitioner remitted a sum of Rs. 9, 300/- in the sundry account and gave an undertaking for balance. The officers with a sinister motive of safeguarding the interest of an officer, the Petitioner was made as a scapegoat and he became a victim of coercion and duress while the real culprits are allowed to escape from the clutches of the bank. Though the enquiry was conducted, the Enquiry Officer without properly appreciating the evidence given by the witnesses as well as the documents produced by the bank has come to the hasty conclusion on his own presumption and surmises. Therefore, the findings of the Enquiry Officer are highly biased and based on conjectures and surmises and the conclusion of the Enquiry Officer is perverse and unsustainable. The accountholder namely Mrs. Parvathi was not produced before the enquiry for examination and she never made any complaint with regard to discrepancies in her account. Even in the enquiry, no one has given evidence as witness against the Petitioner. Neither the Petitioner nor his wife did give any letters admitting the guilt voluntarily on 3-7-1991. The letters were obtained out of threat and undue influence. The enquiry was not conducted in a proper manner. No real or substantial opportunity was given to the Petitioner to defend himself in the enquiry. The bank did not produce authors of complaint in the enquiry for cross examination. The complaints were marked without the author affirming the same in enquiry. The whole enquiry was sham and pretence. The management cannot rely on the enquiry for any purpose. The Petitioner was not furnished with copies of documents, which formed basis for laying charge sheet against him, either along with the charge sheet or at any time prior to the commencement of the enquiry. Since the confession letter was repudiated, the Enquiry Officer should not place reliance upon the confession letter and find the Petitioner guilty of the charges on the basis of the said confession letter. Therefore, the findings of the Enquiry Officer are bad in law and unsustainable. In any event, even assuming that these charges are proved, this Court has ample power to interfere with the punishment under Section 11A of Industrial Disputes Act, since the removal from service is too harsh and disproportionate to the gravity of the misconduct alleged by the Respondent/Management. For all these reasons, the Petitioner prays that an award may be passed to reinstate him in service with back wages, continuity of service and other attendant benefits.

4. As against this, the Respondent in its Counter Statement contended that no doubt, the Petitioner was working as sub-staff. The practice of the branch in clearing

cheques which are received for collection is that the cheque number and drawee bank's name are entered in a register called clearing register and the cheques are kept in a bag and before sending the cheques for clearance, a schedule of cheque sent for clearance is typed and sent to non-business office of the Respondent bank for clearance. After the cheques are cleared, the non-business office prepares a statement showing the branch code number and the cheques which have been cleared. On 8-5-91 one Prabahuram Traders who are having a current account in Washermenpet branch presented a demand draft drawn on Lakshmi Vilas Bank for Rs. 9491.50 for clearing. On 1-4-91 one Charanya Agency presented a cheque No. 949864 drawn on Indian Overseas Bank Periyar Nagar branch for Rs. 3104.70 for clearing. After a few days, the representative of Prabhuram Traders reported that no credit was given for their demand draft for Rs. 9491.50 and similarly Charanya Agency also complained that no credit was given for Rs. 3 104.70. When the matter was probed, it was found that demand draft were not at all entered in clearing register. The party was asked to get a duplicate demand draft. However, it transpired that demand draft was paid on 13-5-91. Afterwards the Washermenpet branch compared the clearing schedule mentioned, in non-business office with their clearing register and it was found that demand draft amount of Rs. 9491.50 was typed in schedule but the same was not included in clearing schedule. Similarly the cheque for Rs. 3104.70 drawn on Indian Overseas Bank tendered by Charanya Agencies for collection was also found in clearing schedule but not in clearing register and it was found a sum of Rs.12,030/- was withdrawn from the HSS account No. 5553 on 28-5-91 and it was utilised for purchase of demand draft for Rs.12,000/- in favour of one Mr. E.Anandan. The Petitioner encashed the demand draft for Rs.12, 000/- through Indian Bank Erukkancheri branch. Further, it transpired that the Petitioner had forged the signature of Mrs. Parvath, accountholder of HSS No. 5553 in withdrawal slip dated 28-5-91. When the Petitioner was questioned on 3-7-91 he gave a letter that he got a sum of Rs. 23,000/- covered by three instruments tendered by Prabhuram Traders and Charanya Agencies and Selvavinayagar Traders transferred to HSS account No. 5553 of Mrs. Parvathi and he signed the withdrawal slip in the name of Parvathi and had withdrawn the amount for taking demand draft in the name of Anandan which he had encashed through Erukkancherry branch of Indian Bank. His wife K. Amirthavalli also signed in that letter. The letter was attested by M/s. Sundararaman, Gunasekaran, Ramanathan and Ramachandran. The Petitioner also gave another letter stating that he had removed the cheques tendered by the parties got them cleared crediting to the account of HSS account No. 5553. Therefore, the charge sheet was issued to Petitioner. Further, the Respondent made reference to Forensic Department of Govt. of Tamil Nadu for comparison of writings. The forensic department gave its opinion that specimen handwriting in S6 to S9 Q1 to Q8 and S1 have all been written by one and the same person. In other words, the handwriting expert's opinion was that they were all written by Petitioner. Therefore, after examining the witnesses, the Enquiry Officer gave his finding that the charges framed against the Petitioner were proved. It is false to allege that confession letters were obtained from the Petitioner and his wife by coercion and after following the procedure, the Respondent/Bank had imposed the punishment of dismissal from service on the Petitioner. Therefore, the punishment of dismissal cannot be said to be too harsh or excessive. It is false to allege that copy of the documents were not given to the Petitioner. The enquiry conducted by the Respondent/Bank is just and proper and it cannot be said that he was denied reasonable opportunity to defend himself in the enquiry. The Enquiry Officer has given findings based on adequate evidence and in any event, the documentary evidence available on record will amply prove the charges framed against the Petitioner. Therefore, the findings of the Enquiry Officer should not be interfered with. Hence, for all these reasons, the Respondent prays that the claim may be dismissed with costs.

5. In these circumstances, the points for my consideration are—

(i) Whether the dismissal of the Petitioner from service by the Respondent/Management is legal and justified?

(ii) To what relief the Petitioner is entitled?"

Point No. 1 :

6. In this case, though the Petitioner has alleged that the enquiry was not conducted in a just and proper manner, at the time of arguments. It was not disputed that the enquiry conducted by the Respondent/Management against the Petitioner was not proper. In this case, Respondent/Management has marked the entire enquiry proceedings and documents as Ex. M1 to M14. Both sides have not examined any witness.

7. The counsel for the Petitioner argued that findings of the Enquiry Officer are based on the alleged confession letter given by the Petitioner on 3-7-91, but actually this confession letter was obtained by force and coercion. On 3-7-91, the Petitioner was asked to meet the Regional Manager of the said Bank at Mount Road along with his wife, but to the Petitioner's surprise, inside the cabin, the Regional Manager, Assistant Regional Manager, Mr. M. Ramachandran and some other officers of Regional Office coerced the Petitioner and his wife with a threat that Petitioner would be immediately dismissed from service and handed over to police, if he fail to write what they said and only under threat to his life, the Petitioner has written the letter as directed by the Regional Manager and Assistant Regional Manager. Therefore, no reliance can be placed on the document dated 3-7-91, on the other hand, the Enquiry Officer has placed much reliance on this document. The next document on which the Enquiry Officer

relied is the forensic experts opinion. But with regard to signature contained in the document, which has been done behind the back of the Petitioner and no opportunity was given to the Petitioner in this regard. Further, the Petitioner was not put on notice about the sending of documents to expert opinion. Therefore, the opinion of the expert is not binding on the Petitioner/Workman and also this document was not marked through the expert in the enquiry. Therefore, no reliance can be placed on this document because he was not subjected to cross examination. The learned counsel for the Petitioner further argued that according to the allegation in the charge memo the Petitioner has misappropriated the amount by diverting the proceeds of demand draft No. 188997 for Rs. 9491.50 and cheque No. 949864 for Rs. 3104.70 to HSS account No. 5553 and later withdrawn the amount by means of demand draft for Rs. 12,030/-, but they have not spoken anything about the remaining amount out of Rs. 25,078.66. The enquiry findings also silent with regard to this amount and who did the said misappropriation of the sum is still a mystery. Neither the Disciplinary Authority nor the Enquiry Officer took any initiative to investigate the matter further, because the further investigation would definitely reveal the involvement of the higher officers as well as the other dealing clerks and just to avoid that, the poor peon belonging to a most backward class has been made a scapegoat and pay for the sins of others. Further the management witness No. 4 namely Mr. Santhanam has stated that when the cheques are received, they will be stamped and given to the clerk and he will enter the same in register which will be given to officer concerned and the officer will verify both the cheques and the challans and initiated the challan and then the cheques will be separated and will be given to the clerk for typing when the total of the cheques and total of the register tallies, the same will be sent to Non-business office along with typed schedule. When such is the procedure, how a peon of the bank will divert the cheque amount to an account unconnected to the cheque and remit in that account is still not answered by the authorities. Even assuming, without conceding that the Petitioner has committed this misappropriation, it would not have been taken place without the connivance of the officials of the Washermenpet branch. Under such circumstances, the Petitioner alone was taken into task and Enquiry Officer has hastily given the finding that the charges framed against the Petitioner has been proved basing on the alleged confession made by the Petitioner, which was obtained by undue influence and force. It is his further argument that when the forensic expert, the report of the expert was marked behind the back of the Petitioner, certified that the signatures in the specimens signatures card and the signatures ME 10A & 10B namely credit challan for Rs. 2,596.20 and for Rs.10,000, ME 12 —demand draft application for Rs. 12,030, ME11 withdrawal slip are the same handwritings, the Enquiry Officer has given a finding that there is possibility that the original specimen signature card might have been tampered or replaced without anybody's knowledge, this shows that Enquiry Officer with a pre-concluded notion has come to a conclusion that the Petitioner has done all these misdeeds. It is also his contention that the account holder was not produced before the enquiry for examination and it is also a fact that she never made any complaint with regard to discrepancy in her account. Therefore, the enquiry was not conducted in a proper and fair manner and all the documents were given to the Petitioner's representative only at the time of enquiry and a hasty finding was given by the Enquiry Officer. Under such circumstances, no reliance can be placed on the findings of the Enquiry Officer and it is a perverse one.

8. As against this, the learned counsel for the Respondent/Management argued that no doubt, the Petitioner has taken a plea that confession letter was obtained by undue influence and coercion in the claim statement, but he has not complained about the same in any of the proceedings in the enquiry. Further, even in the personal hearing, he has admitted the guilt and prayed only sympathy to the Appellate Authority for a lesser punishment. Under such circumstances, the plea of undue influence and coercion was taken only as an afterthought and the Tribunal need not go into the question whether it was obtained by undue influence and coercion. When there is no dispute, the Petitioner himself has voluntarily given the confession letter that he has misappropriated the funds of Selvavinayagar Traders and therefore, it can be presumed that this letter of confession was given voluntarily by the Petitioner. Further, the Petitioner has also remitted a sum of Rs. 9.300 voluntarily in respect of his confession and therefore, there is no necessity for the Petitioner to remit this amount, in case if the confession letter was obtained by force and coercion. The handwriting expert has confirmed that all the writings made in the disputed documents were written by one and the same person namely the Petitioner herein. The failure to examine Mrs. Parvathy would be of no consequence, because the forgery has been established by the report of the forensic science department expert. If really, the operation of HSS account No. 5553 was done by the account holder Mrs. Parvathy, nothing prevented the Petitioner to examine her on his side to probe his innocence, inasmuch as he failed to do so, he cannot make complaint that the bank should have examined her. It is his further argument that it is not correct to say that officers and clerks were involved in fraudulent transactions relating to diversion of proceeds of instruments of Charanya Agencies and Prabhuram Traders into the Savings Bank account No. 5553 and subsequent withdrawal of the amount because, the same was clearly established before the enquiry through documents. Under such circumstances, the arguments advanced on behalf of the petitioner is without any substance.

9. But, again the learned counsel for the Petitioner argued that the so called enquiry was not conducted in a fair and proper manner. It is evident that the Petitioner did

not know English, but the enquiry was conducted in a foreign language and the representative of the Petitioner has betrayed his confidence reposed on him and under such circumstances, the enquiry is sham and nominal one, as no real opportunity was given to the Petitioner to know what was transpired in the enquiry.

10. Though, I find some force in the contention of the learned counsel for the Petitioner, I am not inclined to accept the argument of the counsel for the Petitioner because before filing this claim petition, the Petitioner has not taken any objection that the confession letter dated 3-7-91 was obtained by undue influence and coercion. But, on the other hand, he has admitted by way of confession letters in three times. Further, even at the time of personal hearing, he has accepted the findings of the Enquiry Officer and he pleaded only mercy of the Respondent/Management. Under such circumstances, I am of the opinion that the confession letter alleged to have been given by the Petitioner is true and voluntary and it cannot be said that it was obtained by undue influence and coercion. Any how, in this case as stated by the management witness No. 4, when a cheque was received it has to be passed through number of procedures. Under such circumstance, a peon in class IV cadre of the bank divert the proceeds of cheque amount to an account unconnected and remitted the same in that account cannot bear believed without the connivance of the officials and other staff of the bank. Therefore, I find some point in the contention of the Petitioner with regard to involvement of higher officers as well as other dealing clerks and only just to avoid the embarrassment of the officers, the poor peon belonging to a most backward class has been made as a scapegoat and pay for the sins of others.

11. In these circumstances, the learned counsel for the Petitioner further argued that even without conceding for an argument sake, that the charge framed against the Petitioner has been proved, the punishment of removal from service in these circumstances is harsh and disproportionate to the gravity of the misconduct and he argued that under section 11A of the Industrial Disputes Act, 1947, this Tribunal has got ample powers to interfere with the punishment and a lesser punishment may be awarded to the Petitioner.

12. As I have already stated, I find much force in this contention. Further, in this case, the past record of the Petitioner has not been considered by the Disciplinary Authority before imposing the punishment of dismissal. The counsel for the Petitioner argued that the past record of the Petitioner is unblemished and at no point of time, the Petitioner was issued with any memo or departmental enquiry was conducted against him. Under such circumstances, I find, the punishment given to the Petitioner is disproportionate to the gravity of the misconduct. Any how, since the Petitioner has admitted his guilt by giving confessional letter, I find the punishment of compulsory retirement from service (with pensionary benefits) will be a just and proper in the circumstances of the case. I find this point accordingly.

Point No. 2 :

The next point to be decided in this case is to what relief he is entitled?

13. In view of my foregoing findings, I find the punishment of dismissal imposed on the Petitioner from service is not just and proper and only the punishment of compulsorily retiring the Petitioner Sri E. Kubendiran from services of the Respondent/Bank (with pensionary benefits) would be a proper punishment in the circumstances of the case shown before this Tribunal. Ordered accordingly. No Costs.

14. The reference is disposed of accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 16th March, 2002).

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

On either side None

Documents Marked :

For the I Party/Workman Nil

For the II Party/Management :

Ex. No.	Date	Description
M1	13-11-86	Zerox Copy of the appointment order issued to Petitioner.
M2	13-07-91	Zerox Copy of the memo issued to I Party by the II Party/Management.
M3	09-08-91	Zerox Copy of the reply given by the Petitioner.
M4	13-03-91	Zerox Copy of the chargesheet issued to Petitioner.
M5	Nil	Zerox Copy of the exhibits marked during the enquiry.
M6	02-09-91 to 08-10-91	Zerox Copy of the enquiry proceedings.
M7	16-10-91	Zerox Copy of the submissions of Presenting Officer.
M8	Nil	Zerox Copy of the submissions of Defence.
M9	10-12-91	Zerox Copy of the Enquiry findings.
M10	17-07-92	Zerox Copy of the show cause memo issued to Petitioner.
M11	31-07-92	Zerox Copy of the minutes of personal hearing.
M12	12-08-92	Zerox Copy of the final order of the Disciplinary Authority.
M13	17-09-92	Zerox Copy of the appeal preferred by Petitioner.
M14	Nil	Zerox Copy of the order of Appellate Authority.

नई दिल्ली, 26 अप्रैल, 2004

का. आ. 1166 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय, चेन्नई के पंचाट(संदर्भ संख्या 5/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-4-2004 को प्राप्त हुआ था।

[सं. एल-12012/155/2002-आई.आर. (बी-II)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 26th April, 2004

S.O. 1166 .—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 5/2003) of the Central Government Industrial-Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the employers in relation to the Management of Central Bank of India and their workman, which was received by the Central Government on 26-04-2004.

[No. L-12012/155/2002-IR (B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 17th March, 2004

PRESENT :

K. JAYARAMAN, Presiding Officer.

INDUSTRIAL DISPUTE NO. 5/2003

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Central Bank of India and their workmen)

BETWEEN:

Sri S. Udayakumar	:	I Party/Workman
AND		
The Regional Manager, Central Bank of India, Chennai	:	II Party/Management

APPEARANCES:

For the Workman	:	Sri P. V. Raghavan, Advocate.
For the Management	:	M/s. T. S. Gopalan & Co., Advocates.

AWARD

The Central Government, Ministry of Labour vide Notification Order No.L-12012/155/2002-IR(B-II) dated 29-11-2002 has referred the following dispute to this Tribunal for adjudication :—

"Whether the claim of Shri S. Udayakumar that he was engaged on casual basis by the management of Central Bank of India during the period from 26-8-96 to December, 1998 is factually correct? If so, whether the management is justified in terminating him from service thereafter? If not justified, what relief the workman is entitled to?"

2. After the receipt of the reference, it was taken on file as I.D.No.5/2003and notices were issued to both the parties and both the parties entered appearance through their advocates and filed the Claim Statement and Counter Statement respectively.

3. The allegations in the Claim Statement of the Petitioner are briefly as follows :—

The Petitioner joined the services of the Respondent/Management on 26.8.96 as casual labour in Kalavai Extension Counter of Melmaruvathur branch of the Respondent/Bank. It was opened on 26.8.96 and from that day onwards, the Petitioner was working continuously without any break whatsoever. But the bank without regularising his services, illegally and unjustifiably terminated his service in December, 1998. Even after repeated representations, the Respondent/Bank has not reinstated the Petitioner.' The Petitioner has worked continuous-without any break for more than 240 days in each calendar year especially preceding one calendar year prior to his illegal termination. The Petitioner was engaged by the Respondent/Bank in his own name for four days, then for next four days would engage him in the name of Ravi, then next four days as Murugesan, then as Kuppammal etc. The branch authorities used to take receipts for payments in the various names as above. Therefore, the Respondent's action is illegal, arbitrary and unjustified and is also in violation of circular issued by the Central Office of the Respondent/Management. Any how, his services were terminated by the Branch Manager orally without giving any notice which in violation of Section 25F of the Industrial Disputes Act. Further, engaging the Petitioner as Casual Labour for such a long period and also illegally causing his non-employment is unfair labour practice. For all these reasons, the Petitioner prays that he should be reinstated in service with continuity of service, back wages and attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that being the nationalised bank, the Respondent/Bank's employment opportunities in the bank should be made available to all eligible candidates with no one gaining entry into permanent service by back door or with the help or connivance of vested interest both inside and outside the bank. Therefore, the Respondent/ Management has informed all the branches to employ

only sponsored candidates of Employment Exchange, even for engagement of casual or temporary employee or even part-time employees. The bank has issued circular to the effect that even candidates sponsored by Employment Exchange should not be engaged for more than 60 days in a period of twelve months. The object of such instruction is intended to ensure that no one gains entry into the permanent service of the bank-through default, manipulation or through back door. The Respondent/Bank is having a branch at Melmaruvathur and one of its constituents is Adiparasakthi Amman Trust. The trust runs a college at Kalavai, Kancheepuram district. In order to serve the said college, the trust was insisting the Respondent to open an extension counter and the extension counters were primarily set up by way of customer service. Therefore these extension counters are run with minimum staff incurring minimum expenses. Further, these extension counters are located in remote areas. In this case, the extension counter at Kalavai is at the distance of 120 kms. from Melmaruvathur and 70 kms. from Kancheepuram. As the Respondent/Bank has been having excess staff and there was a bar by Govt. on recruitment, no new appointments were made for the last few years and therefore, all postings and transfers are to be done by deployment of existing staff and officers from among the various branches. Further the branch in-charge is not empowered to engage any person even as a casual or temporary sub-staff and if he does so, the same will not be binding on the Respondent/ Management. In this case, even according to the statement of the Petitioner between August, 1996 and 1998 he had worked only for 187 days and according to this statement, he was lastly engaged on 31.8.98. The Respondent/ Management was not aware either about the engagement or his non-engagement. The Petitioner was not sponsored by Employment Exchange and his engagement was unauthorised and would not be binding on the Respondent/ Bank. It would be evident that the engagement of the Petitioner was done by way of nepotism than by way of selection among the candidates sponsored by Employment Exchange and his engagement was on the volition of the concerned Branch Manager solely with a view to enable him to gain entry, if possible, into the services of the bank. Therefore, the engagement of the Petitioner was unauthorised and it would not confer a right on him to make a claim for employment. Since the Petitioner's engagement itself was unauthorised, the question of termination would not arise. Hence, for all these reasons, the Respondent prays that claim may be dismissed with costs.

5. In these circumstances, the points for my consideration are :—

(i) "Whether the claim of the Petitioner that he was engaged on casual basis by the Respondent/Bank during the period from 26.8.96 to December, 1998 is factually correct?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1:—

6. The Petitioner namely Sri S.Udayakumar has examined himself as WW1 and marked 18 documents as Ex.W1 to W18. He has marked the copy of the letters written to the respondent management on several days and also to the General Secretary, Staff Union of the Respondent/ ,Bank. As against this, the Respondent has marked only three documents as Ex.M1 to M3 in which Ex.M1 and M2 are circulars with regard to recruitment of part time employees and Ex.M3 is the copy of representation sent by the Petitioner.

7. The learned counsel for the Petitioner contended that the Petitioner joined the services of the Respondent/ Management even on the date of opening of the bank on 26.8.96 and he was continuously working there as a workman without any break and he has completed more than 240 days in each calendar year, especially preceding one calendar year prior to his illegal termination namely December, 1998. But, he has not produced any document to show that the Petitioner has worked as casual labourer for more than 240 days. Then again, the counsel for the Petitioner argued that the Petitioner worked as a casual labour continuously in his own name for four days and then for the next four days the Respondent/Bank would engage him in the name of third persons namely Ravi, Murugesan and Kuppammal and he further argued that the bank authorities used to take receipts on various names as mentioned above and thus, he has served more than 240 days in total and therefore, the termination of the Petitioner is illegal and arbitrary. But, even assuming for an argument sake that the Petitioner has worked in different names in the Respondent/Bank branch, he has not produced any document to show that he has received the payments in different names and he has worked continuously for more than two years. Therefore, the argument of the counsel for the Petitioner that the Petitioner has worked more than 240 days is without any proof. Again, the learned counsel for the Petitioner argued that before the termination of the Petitioner, no notice of termination or no compensation was given by the Respondent and therefore, the termination is illegal and the Respondent Bank has not followed the mandatory provisions of Section 25F of the I.D.Act.

8. As against this, learned counsel for the Respondent relied on rulings reported in 100 (2002) FJR 397 RANGE FOREST OFFICER Vs. S.T. HADIMANI, wherein the Supreme Court has held that "*Labour Court was not right in placing the onus on the management, without first determining on the basis of cogent evidence that the Respondent had worked for more than 240 days in the year preceding his termination. Since the claim of the Respondent that he had worked for 240 days was denied by the management, it was for the Respondent to*

lead evidence to show that he had in fact worked for 240 days. In the absence of proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for that period, the mere filing of an affidavit was not sufficient evidence for the Labour Court to come to the conclusion that the Respondent had in fact worked for 240 days and therefore the award of the Labour Court was liable to be set aside." Relying on this ruling, the counsel for the Respondent argued that though the Petitioner has alleged that he has worked for more than 240 days continuously in a year, he has not produced any document to show that he has worked for more than 240 days. Even in the representation to the Respondent/ Management, he has given the particulars with regard to only for 187 days totally. Under such circumstances, it cannot be said that the Petitioner has worked for more than 240 days.

9. Again, the learned counsel for the Petitioner argued that the Respondent in its Counter Statement contended that the Respondent/Bank has issued circulars to the effect that even the candidates sponsored by the Employment Exchange should not be engaged for more than 60 days in a period of 12 months and this circular itself is against the provisions of Industrial Disputes Act, and only on the ground that the workmen should not get the benefits of Industrial Disputes Act, these circulars were issued. Similarly, in this case, though the Petitioner has worked for more than 240 days in a year, the Respondent/ Bank branch officers have engaged the Petitioner in different names only to circumvent the circular issued by the Respondent/Management. Under such circumstances, the Tribunal can presume that the Petitioner has worked for more than 240 days in a year in different names.

10. But, even assuming for an argument sake that this fact namely the Petitioner was engaged by the Respondent/Bank branch in different names, there is no proof that the Petitioner has received salary or wages in different names on these days continuously for more than two years. Under such circumstances, I am not inclined to believe that the Petitioner/Workman has worked for more than 240 days continuously.

11. Again, the learned counsel for the Respondent argued that the management of the Respondent/Bank has issued several circulars to the branch offices with regard to recruitment of part time or full time safai karmacharies, wherein they have clearly mentioned that the recruitment to part time or full time safai karmachari shall be made through the medium of Employment Exchange only. In this case, the Petitioner was not alleged to have been appointed through the medium of Employment Exchange. Therefore, even assuming that the Petitioner was engaged by the Respondent/Bank, it was only against the circulars given by the Respondent/Management and the Branch Manager has not empowered to engage any person even as casual or temporary sub-staff and if he has done anything against the circulars, the same will not be binding on the management of the Respondent/Bank. Therefore, since the engagement itself was unauthorised, the question of termination would not arise at all and the same is not binding on the bank. Further, he has relied on the rulings reported in 1999 II LLJ 1173 CALCUTTA TRAMWAYS Vs. RAMESH and 2003 II LLJ 948 UNION OF INDIA Vs. LAKHRAJ, wherein it was observed that "*appointment to permanent service must be made in terms of recruitment rules, for that purpose there must exist a vacancy, the person appointed through backdoor therein, not in conformity with the rules, could not claim permanency in service..... If the initial appointment was illegal on account of non-following the procedure for appointment, the incumbent cannot claim as a matter of right to be regularised.*" He also relied on the rulings reported in 1997 II LLJ 331 wherein it is held that "unless a person is appointed on regular basis according to rules, after consideration of the claim on merits, there is no question of regularisation of service". In this case, it is clear that the Petitioner was not appointed as per the procedure given by the management. Even from the documents produced by the Respondent, it is clear that the Petitioner was recommended by one Mrs.Lakshmi Bangaru, Vice President of Adhiparasakthi Trust, therefore, it is clear that the engagement of the Petitioner was done by way of nepotism than by way of selection among the candidates sponsored by Employment Exchange and his employment was in volition of the concerned Branch Manager solely with a view to enable him to gain entry. Therefore, it would not confer any right on the Petitioner to make a claim for employment. Further, the learned counsel for the Respondent argued that even assuming for an argument sake that as no notice of termination was issued, reinstatement should be given to the Petitioner in this case, the Petitioner not being interested in going as Casual Labour, but as a permanent workman, he is not eligible for reinstatement although the relief of reinstatement is claimed. He further argued that in his cross examination, the Petitioner has clearly stated that he has asked only regularisation and he does not want to continue as temporary part-time sweeper. Under such circumstances, even assuming that the Petitioner is to be reinstated on the ground that the Respondent/Bank has not followed the procedure as laid down under Industrial Disputes Act, the Petitioner is not eligible for reinstatement in this case. For this he relied on the rulings 2003 I LLJ 700 BASKAR R. AND OTHERS Vs. AUTO CARE CENTRE, wherein the High Court of Madras has held that "*the counsel appearing for the Respondent argued that the effect of an order of reinstatement is merely to set at, nought the order of wrongful, dismissal of the workman by the employer and to reinstate him in service as if the contract of employment originally entered into had been continuing. The benefit of reinstatement awarded to a workman does not become a term or condition of a contract and cannot be treated as a part of contract between him and the employer. The*

learned counsel further argued that there is no variation of those terms and conditions of the contract. The only thing which happens is that the workman is reinstated in his old service as before, but in the instant case, since the Petitioners were not interested to join as Casual Labour the Labour Court has rightly awarded compensation and upholding this argument, the High Court has held the Labour Court refused to grant reinstatement as that the Petitioners are not interested in joining as Casual Labourers. When the Petitioners themselves are not interested in employment as Casual Labour, while moulding the relief, the Labour Court has awarded the compensation of 15 days salary for a year and one month salary in lieu of notice." An Upholding the contention of the Labour Court "the High Court awarded an additional compensation to the workmen." In this case, the learned counsel for the Respondent argued that even assuming for an argument sake that the Petitioner is entitled to a notice under Section 25F of the Industrial Dispute Act, the only relief the Petitioner entitled is compensation and not reinstatement because he is not interested in reinstatement as Casual Labour. Under such circumstances, the Petitioner is not entitled to any relief as claim by him.

12. I find much force in this contention because, as I have already stated that the Petitioner has not produced any document to show that he has worked for more than 240 days in a year that too prior to his alleged illegal termination. The Petitioner alleged in the Claim Statement that he was terminated in December, 1998 but, he has not mentioned any date in the Claim Statement. But in the notice given to the Respondent/Management under Ex. M3, he has alleged that he has been terminated on 30-8-98. But, even assuming that he has been terminated on 30-8-98 he has not produced any document to show that he has worked for more than 240 days in a continuous period of twelve months. Under such circumstances, this point is to be answered against the Petitioner.

Point No. 2 :—

The next point to be decided in this case is to what relief the workman is entitled?

13. In view of my foregoing findings that the Petitioners contention is not proved, in this point, it is to be found that Petitoner is not entitled to any relief. But, the Industrial Disputes Act is enunciated with regard to welfare measure of the workmen and in this case, Respondent/ Management has admitted that the Petitioner has been appointed as Casual Labour for intermittent periods and it is not the case of the Respondent/Management that the service of the Petitioner has been validly terminated as per provisions of Industrial Disputes, Act, 1947 I find though the Petitioner is not entitled to reinstatement, he is entitled to compensation. But, I find the compensation as per provisions will be a meagre amount. Under such circumstances, I find a sum of Rs. 10,000/- (Rupees Ten thousand only) as compensation is find justifiable one and therefore, I direct the Respondent/Management to pay the Petitioner Sri S. Udayakumar a sum of Rs. 10,000/- (Rupees Ten thousand only) towards compensation within a period of two months from the date of this Award. No Costs.

14. The reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 17th March, 2004.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

For the I Party/Workman :— WW1 Sri S. Udaya kumar

For the II Party/Management : None

Documents Marked :-

Ex. No.	Date	Description
W 1	23-08-96	Xerox copy of the application given by Petitioner.
W 2	02-09-97	Xerox copy of the representation given by Petitioner for regularisation.
W 3	30-09-97	Xerox copy of the representation given by Petitioner for regularisation.
W 4	Nil	Xerox copy of the postal acknowledgement.
W 5	25-10-97	Xerox copy of the representation given by Petitioner for regularisation.
W 6	17-11-97	Xerox copy of the representation given by Petitioner for regularisation.
W 7	24-11-97	Xerox copy of the representation given by Petitioner for regularisation.
W 8	12-01-98	Xerox copy of the representation given by Petitioner for regularisation.
W 9	22-01-98	Xerox copy of the representation given by Petitioner for increase in daily wages to the General Secretary of Employees Union.
W 10	Nil	Xerox copy of the representation given by Petitioner for regularisation to General Secretary of Union.
W 11	17-07-98	Xerox copy of the representation given by Petitioner for regularisation
W 12	20-09-98	Xerox copy of the representation given by Petitioner for regularisation to the General Secretary of the Union for Respondent/Bank.
W 13	12-10-98	Xerox copy of the representation given by Petitioner for regularisation to Respondent/Bank.
W 14	Nil	Xerox copy of the postal acknowledgement.

W 15	12-10-98	Xerox copy of the representation given by Petitioner for regularisation to the General Secretary of Staff Union of Respondent/Bank.
W 16	18-12-98	Xerox copy of the letter from General Secretary of Staff Union to Regional Manager of Respondent.
W 17	12-04-01	Xerox copy of the letter from General Secretary of Staff Union of Respo n-dent/Bank to Assistant Labour Commissioner(Central) raising Dispute.
W 18	Nil	Xerox copy of the statement showing number of days. The Petitioner worked and received payment.

For the II Party/Management :—

Ex. No.	Date	Description
M 1	Nil	Xerox copy of the circular issued by Respondent Regarding recruitment of part-time sweeper.
M 2	09-10-98	Xerox copy of the circular issued by Respondent Regarding engagement of Casual Labour.
M 3	22-05-03	Xerox copy of the letter from Petitioner to Respondent/ Management.

नई दिल्ली, 20 अप्रैल, 2004

का० आ० 1167 .—औद्योगिक विवाद अधिनियम,1947 (1947 का 14) की धारा 33 ग की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार, दिनांक 12-2-2004 की भारत सरकार श्रम मंत्रालय की अधिसूचना संख्या ए-11016/3/2003 सी एल एस-II द्वारा उक्त अधिनियम की धारा 7 के अंतर्गत गठित श्रम न्यायालय, एर्नाकुलम को उस श्रम न्यायालय के रूप में निर्दिष्ट करती है जो उस राशि का निर्धारण करेगा जिस पर उस उप-धारा में उल्लिखित किसी लाभ की गणना केरल राज्य और संघ शासित क्षेत्र लक्षद्वीप में नियोजित कामगारों के संदर्भ में की जाएगी जिसके संबंध में केन्द्र सरकार समुचित सरकार है।

[फा० सं० ए-11016/3/2003-सी एल एस-II]

वाई० पी० सहगल, अवर सचिव

New Delhi, the 20th April, 2004

S.O. 1167.— In exercise of the powers conferred by Sub-section (2) of Section 33C of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby specifies the Labour Court, Ernakulam, Constituted under Section 7 of the said Act by the notification of the Government of India in the Ministry of Labour No. A-11016/3/2003-CLS-II, dated 12-2-2004 as the Labour Court which shall determine the amount at which any benefit referred to in that Sub-section would be computed in terms of money in relation to workmen employed in any industry in the State of Kerala and the Union Territory of Lakshadweep in respect of which the Central Government is the appropriate Government.

[F. No. A-11016/3/2003-CLS-II]

Y. P. SEHGAL, Under Secy.

नई दिल्ली, 20 अप्रैल, 2004

का० आ० 1168.—औद्योगिक विवाद अधिनियम,1947 (1947 का 14) की धारा 33 ग की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार, यह प्रावधान करने के लिए दिनांक 29-8-2000 की अधिसूचना संख्या जैड-13011/1/97 सी एल एस-II में और संशोधन करती है कि भारत सरकार के श्रम मंत्रालय की दिनांक 3-2-1987 की अधिसूचना संख्या ए-11016/5/85 सी एल टी द्वारा उक्त अधिनियम की धारा 7 के अंतर्गत गठित श्रम न्यायालय, बंगलौर श्रम न्यायालय होगा जो उस राशि का निर्धारण करेगा जिस पर उस उप-धारा में उल्लिखित किसी लाभ की गणना कर्नाटक राज्य (केवल) में किसी उद्योग में नियोजित कामगारों के संदर्भ में की जाएगी जिसके संबंध में केन्द्र सरकार समुचित सरकार है।

[फा० सं० ए-11016/3/2003-सी एल एस-II]

वाई० पी० सहगल, अवर सचिव

New Delhi, the 20th April, 2004

S.O. 1168 :— In exercise of the powers conferred by Sub-section (2) of Section 33C of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby further amends the notification No. Z-13011/1/97-CLS-II dated 29-8-2000 to provide that the Labour Court, Bangalore constituted under Section 7 of the said Act, by the notification of the Govt. of India in the Ministry of Labour No. A-11016/5/85-CLT dated 3-2-1987 shall be the Labour Court which shall determine the amount at which any benefit referred to in that Sub-section would be computed in terms of money in relation to workmen employed in any industry in the State of Karnataka (only) in respect of which the Central Government is the appropriate Government.

[F. No. A-11016/3/2003-CLS-II]

Y. P. SEHGAL, Under Secy.

नई दिल्ली, 21 अप्रैल, 2004

का० आ० 1169 .—कर्मचारी भविष्य निधि तथा प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) की धारा 5 कक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार एतद्द्वारा भारत के राजपत्र में इस अधिसूचना के प्रकाशन की तिथि से, कर्मचारियों के प्रतिनिधि श्री ए०डी० नागपाल को उक्त अधिनियम के अन्तर्गत कार्यकारी समिति का सदस्य नियुक्त करती है और भारत सरकार के श्रम मंत्रालय की दिनांक 21 जुलाई, 2003 के सां०आ० संख्या 858(अ) की अधिसूचना में निम्नांकित संशोधन करती है।

2. उक्त अधिसूचना में क्रमांक 12 में निम्नांकित प्रविष्टियों को प्रतिस्थापित किया जाएगा, अर्थात् :—

श्री ए० डी० नागपाल

हिन्द मजदूर सभा

[फा. संख्या वी-20012/1/03-एस. एस.-II]

संयुक्ता राय, अवर सचिव

New Delhi, the 21st April, 2004

S.O. 1169 . In exercise of the powers conferred by Section 5AA of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby appoints, with effect from the date of publication of this Notification in the Gazette of India, Shri A.D. Nagpal, Employees' representative as a member of the Executive Committee constituted under the said Act and makes the following amendment in the Notification of the Government of India in the Ministry of Labour S.O. No. 858(E) dated the 21st July, 2003.

2. In the said Notificaiton, against the Serial No. 12, the following entries shall be substituted namely :

Shri A. D. Nagpal

Hind Mazdoor Sabha

[F. No. V-20012/1/03-SS-II]

SANJUKTA RAY, Under Secy.

नई दिल्ली, 22 अप्रैल, 2004

का० आ० 1170 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 7 की उपधाराओं (1) एवं (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार उक्त अधिनियम की द्वितीय अनुसूची में उल्लिखित किसी मामले से संबंधित औद्योगिक विवादों के न्यायनिर्णयन और उक्त अधिनियम के अंतर्गत सौंपे गए अनुसार ऐसे अन्य कार्यों के निष्पादन के लिए अहमदाबाद में मुख्यालय के साथ एक औद्योगिक अधिकरण का गठन करती है और श्री बी० आई० काजी को दिनांक 12 अप्रैल, 2004 (पूर्वाह्न) से उक्त न्यायालय के पीठासीन अधिकारी के रूप में नियुक्त करती है।

[फा० सं० ए-11016/5/2003-सी एल एस-II]

वाई० पी० सहगल, अवर सचिव

New Delhi, the 22nd April, 2004

S.O. 1170 . In exercise of the powers conferred by sub-sections (1) and (2) of Section 7 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes a Labour Court with Headquarters at Ahmedabad for the Adjudication of Industrial Disputes relating to any matter specified in the Second Schedule to the said Act and for performing such other functions as may be assigned to it under the said Act, and appoints Shri B. I. Kazi as Presiding Officer of that Court with effect from 12th April 2004 (FN).

[File. No. A-11016/5/2003-CLS-II]

Y. P. SEHGAL, Under Secy.

नई दिल्ली 22 अप्रैल, 2004

का० आ० 1171 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 7 (क) की उपधारा (1) और (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार तीसरी अनुसूची में उल्लिखित किसी मामले से संबंधित औद्योगिक विवादों के न्यायनिर्णयन और उक्त अधिनियम के अंतर्गत सौंपे गए अनुसार ऐसे अन्य कार्यों के निष्पादन के लिए अहमदाबाद में मुख्यालय के साथ एक औद्योगिक अधिकरण का गठन करती है और श्री बी० आई० काजी को दिनांक 12 अप्रैल, 2004 (पूर्वाह्न) से इस अधिकरण का पीठासीन अधिकारी नियुक्त करती है।

[फा० सं० ए-11016/5/2003-सी एल एस-II]

वाई० पी० सहगल, अवर सचिव

New Delhi, the 22nd April, 2004

S.O. 1171 . In exercise of the powers conferred by Sub-sections (1) and (2) of Section 7(A) of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes an Industrial Tribunal with Headquarters at Ahmedabad for the adjudication of Industrial Disputes relating to any matter specified in the Third Schedule and for performing such other functions as may be assigned to it under the said Act, and appoints Shri B. I. Kazi as Presiding Officer of the Tribunal with effect from 12th April, 2004 (FN).

[File. No. A-11016/5/2003-CLS-II]

Y. P. SEHGAL, Under Secy.

नई दिल्ली, 22 अप्रैल, 2004

का० आ० 1172 .—राष्ट्रपति, श्री बी०आई० काजी को दिनांक 12-4-2004 (पूर्वाह्न) से केन्द्र सरकार औद्योगिक अधिकरण सह-श्रम न्यायालय, अहमदाबाद का पीठासीन अधिकारी नियुक्त करते हैं। श्री बी. आई. काजी केन्द्र सरकार औद्योगिक अधिकरण सह-श्रम न्यायालय अहमदाबाद में तीन वर्षों की अवधि अथवा अगले आदेश होने तक इस पद पर बने रहेंगे।

[सं० ए-11016/5/2003-सी एल एस-II]

वाई. पी. सहगल, अवर सचिव

New Delhi, the 22nd April, 2004

S.O. 1172 The President is pleased to appoint Shri B. I. Kazi as Presiding Officer Central Govt. Industrial Tribunal-Cum-Labour Court, Ahmedabad w.e.f. 12-04-2004 (F.N.), Shri B.I. Kazi will continue to hold the post of Presiding Officer of the CGIT-Cum-Labour Court, Ahmedabad for a period of three years or until further orders.

[No. A-11016/5/2003-CLS-II]

Y. P. SEHGAL, Under Secy.

आदेश

नई दिल्ली, 17 मार्च, 2004

का. आ. 1173 .—जबकि केन्द्र सरकार का विचार है कि इसके साथ संलग्न अनुसूची में उल्लिखित मामलों के संबंध में जवाहरलाल नेहरू पत्तन न्यास और उनके कामगारों, जिनका प्रतिनिधित्व तीन श्रमिक संघों द्वारा किया जा रहा है, के मध्य एक औद्योगिक विवाद विद्यमान है।

और जबकि जवाहरलाल नेहरू पत्तन न्यास का प्रबंधन तथा तीन श्रमिक संघ अर्थात् न्हावा सेवा बंडर कामगार संगठन (ए), न्हावा सेवा पोर्ट एवं जनरल वर्कर्स यूनियन तथा परिवहन एवं गोदी कामगार यूनियन इस विवाद को विवाचन हेतु भेजने के लिए सहमत हो गए हैं।

और जबकि विवाद से जुड़े पक्ष इस विवाद को श्री राजाभाऊ गवांडे, पूर्व प्रेसीडेंट, औद्योगिक न्यायालय, मुम्बई को विवाचन हेतु भेजने पर सहमत हो गए हैं, जिन्होंने इस विवाद के निपटान के लिए विवाचक के रूप में कार्य करने हेतु अपनी सहमति दे दी है।

अतः, अब औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 10-क के उपखंड (3क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा उक्त विवाद को विवाचन के लिए श्री राजाभाऊ गवांडे, पूर्व प्रेसीडेंट, औद्योगिक न्यायालय महाराष्ट्र के पास भेजती है और अनुबंध में दर्शाए गए अनुसार विवाचन करार को प्रकाशित करती है।

अनुसूची

क्या प्रोत्साहन योजना के संबंध में जवाहरलाल पत्तन न्यास के प्रबंधन और (i) न्हावा सेवा पोर्ट एवं जनरल वर्कर्स यूनियन (ii) न्हावा सेवा बन्डर कामगार संगठन (ए) तथा

(iii) परिवहन एवं गोदी कामगार के बीच दिनांक 24-8-2000 के समझौता अनुबंध I, II व III में दर्शाए गए बहुल कारक उचित एवं तर्क संगत हैं? यदि नहीं, तो बहुल कारक क्या होने चाहिए?

[फा. सं. एल-31011/25/2003-आई आर (बी-II)]

सी.गंगाधरन, अवर सचिव

ORDER

New Delhi, the 17th March, 2004

S. O. 1173 Whereas the Central Government is of the opinion that an industrial dispute exists between the employer in relation to the management of Jawaharlal Nehru Port Trust and their workmen represented by the three unions in respect of the matters specified in the Schedule hereto annexed;

And whereas the management of JNPT and the three unions, viz, Nhava Sheva Bunder Kamgar Sanghatana (A), Nhava Seva Port and General Worker' Union and Transport and Dock Workers' Union have agreed to refer the dispute to arbitration.

And whereas the parties to the dispute have also agreed to refer the dispute to the Arbitration of Shri Rajabhau Gawande, Ex-President, Industrial Court, Mumbai, who has given his consent to act as an Arbitrator for settlement of the dispute.

NOW, Therefore, in exercise of the powers conferred by sub-section (3) (A) of section 10-A of the Industrial Dispute Act, 1947, (14 of 1947) the Central Government hereby refers the said dispute to arbitration of Shri Rajabhau Gawande, Ex-President, Industrial Court, Maharashtra and publishes the arbitration agreement as shown in the Annexure.

SCHEDULE

Whether multiplication factors indicated in Ann. I, II and III of the Settlement dated 24-08-2000 between the management of Jawaharlal Nehru Port Trust and (i) Nhava Sheva Port and General Workers' Union (ii) Nhave Sheva Bander Kamgar Sanghatana (A) and (iii) Transport and Dock Workers' Union regarding incentive scheme are fair and reasonable? If not, what should be the multiplication factors?

[F. No. L-31011/25/2003-IR (B-II)]

C. GANGADHARAN, Under Secy.

FORM "C"

(See Rule I)

AGREEMENT

[Under Sestion 10-A of the Industrial Disputes Act, 1947]

BETWEEN:

Representative of Employer

1. Shri R. Ravikumar Chief Manager (Admn.) & Secy. Jawaharlal Nehru Port Trust Sheva, Navi Mumbai

Representative of Workers

1. Shri Bhushan Patil, General Secretary, Nhava Sheva Bunder, Kamgar Sanghatana (A) 64, Shopping Centre, 1st. Floor, JNPT, Township, Uran-400 707
2. Shri Shrikant Patil, Secretary Nhava, Sheva Port & General, Workers' Union, Port Trust, Kamgar, Sadan, Nawab Tank, Road, Mazgaon, Mumbai-400 010.
3. Shri G. O. Kulhe Jt. Secy. Transport & Dock Workers' Union P.D.' Mello Bhavan, P.D.' Mello Road, Carnac Bunder, Mumbai-400 038.

Whereas the workmen representing (i) Nhava Sheva Bunder Kamgar Sanghatana (A), (ii) Nhava Sheva Port & General Workers' Union and (iii) Transport & Dock Workers' Union and the Management of Jawaharlal Nehru Port entered into a Settlement on 24-8-2000 under Section 12(3) of the Industrial Disputes Act, 1947 over the incentive scheme in JNPT.

And whereas under part IV of the Settlement, it was stated that since the parties have been unable to reach a settlement on the quantum of the multiply in factors contained in Annexures. I, II & III, it was agreed to refer this issue to arbitration by a mutually acceptable person under the provisions of the Industrial Disputes Act and this, however, will not hold up implementation of the settlement in its existing form.

It is hereby agreed between the parties to refer the following dispute to the Arbitration of Shri Rajabhau Gawande.

1. ["Whether multiplication factors indicated in Ann, I, II & III of the settlement dated 24-08-2000 between the Management of Jawaharlal Nehru Port Trust and (i) Nhava Sheva Port & General Workers' Union ; (ii) Nhava Sheva Bunder Kamgar Sanghatana (A) and (iii) Transport & Dock Workers' Union regarding incentive scheme are fair and reasonable. If not what should be the multiplication factors".]

2. Total No. of workmen employed in the undertaking is 1581 and 609 are eligible for the incentive payment under the above settlement.

The Arbitrator shall make his award within a period of three months from the date of publication of Agreement in the Official Gazette by the appropriate Government or within such further time as extended by mutual agreement between us in writing. In case, the Award is not made within period aforementioned, the reference to arbitration shall stand automatically cancelled and we shall be free to negotiate for fresh Arbitration.

Representative of Employers	**Representative of Workers**
1. Shri R. Ravi Kumar Chief Manager (Admn.) & Secy. Jawaharlal Nehru Port Trust Sheva, Navi Mumbai	1. Shri Bhushan Patil, General Secretary, Nhava Sheva Bunder Kamgar Sanghatana (A)
	2. Shri Shrikant Patil, Secretary Nhava Sheva Port & General Workers' Union.
	3. Shri G. V. Kulhe, Jt. Secy. Transport & Dock Workers' Union.

Witness :

1._____

2._____

3._____

To,

1. ALC (C); Mumbai
2. RLC, Mumbai
3. CLC, New Delhi
4. The Secretary to the Government of India, Ministry of Labour, New Delhi.

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